Elmer D. Carl to be postmaster at Greencastle, in the county of Franklin and State of Pennsylvania.

Joseph B. Colcord to be postmaster at Port Allegany, in the county of McKean and State of Pennsylvania.

Robert S. Davis to be postmaster at Leetsdale, in the county of Allegheny and State of Pennsylvania.

Matthew P. Frederick to be postmaster at Gallitzin, in the county of Cambria and State of Pennsylvania.

Christian E. Geyer to be postmaster in Catawissa, in the county of Columbia and State of Pennsylvania.

Royal A. Stratton to be postmaster at Conneaut Lake, in the county of Crawford and State of Pennsylvania.

Uriah H. Wieand to be postmaster at Emaus, in the county of Lehigh and State of Pennsylvania.

WEST VIRGINIA.

Joe Williams to be postmaster at St. Marys, in the county of Pleasants and State of West Virginia.

WYOMING.

Frederick E. Davis to be postmaster at Wheatland, in the county of Laramie and State of Wyoming.

HOUSE OF REPRESENTATIVES.

TUESDAY, *December 13, 1904.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

URGENT DEFICIENCY APPROPRIATION BILL.

Mr. HEMENWAY, from the Committee on Appropriations, reported the bill (H. R. 16445) making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1905, and for other purposes; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

Mr. MADDOX. Mr. Speaker, I desire to reserve all points of order upon the bill.

The SPEAKER. The gentleman from Georgia reserves all points of order upon the bill.

Mr. HEMENWAY. Mr. Speaker, I will serve notice that I will call that bill up to-morrow immediately after the House convenes.

LEAVES OF ABSENCE.

By unanimous consent, leaves of absence were granted as follows:

To Mr. BIRDSALL, for ten days, on account of important business.

To Mr. COCHRAN of Missouri, for fifteen days, on account of important business.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

Mr. PALMER. Mr. Speaker, the consideration of resolution No. 274, reported by the Committee on the Judiciary in the matter of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, was postponed until the 13th day of December——

The SPEAKER. The gentleman will suspend. The Chair desires to hear the gentleman from Pennsylvania, and he is satisfied the House also desires to hear him, and the House will please be in order. Gentlemen will please be seated and cease conversation.

Mr. PALMER. This order was made on the 7th of April, and the time has arrived for the consideration of this resolution, and I move that the resolution be read.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high misdemeanor.

Mr. PALMER. Mr. Speaker, I propose to state in the briefest possible form the facts found by a majority of the Judiciary Committee from the testimony in the case, which justifies the conclusion that Charles Swayne, district judge of the United States in and for the northern district of Florida, ought to be impeached by the House and sent before the Senate of the United States for trial. The acts of misbehavior proved by the evidence, briefly stated, are:

First, that the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States, in and for the northern district of Florida, on the 1st day of April, 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, 1890, took the oath of office, and assumed the duties of his appointment, whereupon it became and was the duty of the said Charles Swayne to comply with the act of Congress of the United States which provides that—

A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Nevertheless, the said Charles Swayne, totally disregarding his duty as aforesaid, did not acquire a residence or, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the year 1894 to the year 1903, a period of about nine years.

Wherefore the said Charles Swayne, having persistently and continuously violated the aforesaid law, is guilty of a high misdemeanor.

Second, the said Charles Swayne, judge of the United States in and for the northern district of Florida, while in the exercise of his office as judge did knowingly, arbitrarily, and unjustly impose a fine of $100 upon and commit to prison for a period of ten days without authority of law E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States, to wit, at Pensacola, in the county of Escambia, in the State of Florida, on the 12th day of November, in the year 1901.

Wherefore the said Charles Swayne misbehaved himself in his office of judge, and was and is guilty of an abuse of his judicial power and of a high misdemeanor in office.

Third, the said Charles Swayne, judge of the United States in and for the northern district of Florida, while in the exercise of his office as judge did knowingly, arbitrarily, and unjustly impose a fine of $100 upon and commit to prison for a period of ten days without authority of law Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States, to wit, at Pensacola, in the county of Escambia, in the State of Florida, on the 12th day of November, in the year 1901.

Wherefore the said Charles Swayne misbehaved himself in his office of judge, and was and is guilty of an abuse of his judicial power and of a high misdemeanor in office.

Mr. TAWNEY. Will the gentleman allow me to ask him a question?

Mr. PALMER. Certainly.

Mr. TAWNEY. Was there any affirmative evidence showing the committee that Judge Swayne had a permanent residence outside of his district?

Mr. PALMER. Yes and no. The evidence states that when he left Pensacola he went to Guyencourt, Del.,; the evidence states that he generally told his clerk at Pensacola that he was going to Guyencourt, Del., when he left. The evidence was that he left word with the clerk that if anybody wanted to transact any business with him they could do it at Guyencourt, Del. There was no testimony, and I do not think anybody undertook to prove where his residence actually was. It seemed to be sufficient to prove that his residence was not in Florida, as the act provides that he shall reside in Florida. It was of no particular consequence where he lived if he did not live there. He never voted in Florida; he never was registered in Florida; he never lived there in any proper sense of the term. The idea of the committee was that this act of Congress means what it says, that a man shall be bodily present in the place where he ought to be. A potential residence, a constructive residence, or a legal residence does not answer the purpose for which the act of Congress was passed. It meant that when a judge was appointed to a district he should be there to attend to the business of the people, and not 3,000 miles or 1,000 miles or any number of miles away. Of course, residence is a question of intention, but if a man could gain residence by intention, he might have gone to Florida and said: "It is my intention to live at the Escambia Hotel," or anywhere else, and then have gone to England and spent his time there, coming home when it was necessary to hold his court. But, as I said, I am not going to argue that question now.

Mr. BURKE. Will the gentleman permit a question at that point?

Mr. PALMER. Yes.

Mr. BURKE. What was done with the other attorney who, you say, went to New Orleans?

Mr. PALMER. Mr. Paquet came back some time later and filed a kind of statement in which he said that their conduct was such that Judge Swayne might presume they intended a contempt, whereupon Judge Swayne excused him, and he was neither fined nor imprisoned.

Fourth, the said Charles Swayne, judge of the district court of the United States in and for the northern district of Flor-

ida, did, while in the exercise of his office as judge, without authority of law, commit to prison for a period of sixty days one W. C. O'Neal for an alleged contempt of the United States court for assaulting one Greenhut, who was trustee in a certain bankruptcy proceeding, the said assault having been committed out of the presence of the court and not so near thereto as to obstruct or hinder the administration of justice, and while the said court was not in session; neither was the said assault committed in defiance of any rule, command, or decree of the said court, to wit, at the city of Pensacola, in the county of Escambia, in the State of Florida, on the 9th day of December, 1902.

Wherefore the said Charles Swayne misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Fifth, the said Charles Swayne, judge of the United States court in and for the northern district of Florida, did, while in the exercise of his authority as aforesaid, appoint to the office of commissioner of the United States one B. C. Tunison, to wit, at the city of Pensacola, in the State of Florida, on or about the 1st day of July, 1897, who was at the time of such appointment, and is now, a man of bad character for truth and veracity, the character of said Tunison being well known to the said Charles Swayne at and before the time the said appointment was made.

Wherefore, the said Charles Swayne brought the administration of justice into disrepute, and was, and is, guilty of misdemeanor in office.

Sixth, the said Charles Swayne, judge of the United States in and for the northern district of Florida, so conducted himself in his said office of judge as to beget and induce a general belief among the members of the bar practicing in his court and district, and among the suitors in the court of the United States in the northern district of Florida, that one B. C. Tunison had and could exercise undue and improper influence over him, the said Charles Swayne, and that on account of said influence it was advisable to employ the said Tunison to prosecute cases before the said Charles Swayne, and that the said Tunison was in fact employed in cases for that reason.

Wherefore the said Charles Swayne was and is guilty of misbehavior in office.

Seventh, the said Charles Swayne, while exercising the office of judge, to wit, at Pensacola, Fla., arbitrarily and unjustly refused to hear witnesses summoned and present in a pending case on the ground that he would not believe them if sworn, and continued without day, without any sufficient cause or reason, the said case, to wit, of one W. H. Hoskins, an alleged bankrupt, whose property had been seized and who denied that he was insolvent, and in whose case an order had been made for a trial before a jury, to wit, on the 31st day of March, 1902, to the great injury of said Hoskins, the action of said Charles Swayne in the premises being a denial of justice, a violation of his official oath, and an abuse of his judicial power and a high misdemeanor in office.

Eighth, that the said Charles Swayne misbehaved himself in his office of judge of the United States court in and for the northern district of Florida in that the said Charles Swayne used the property of the Jacksonville, Tampa and Key West Railroad, to wit, a car belonging to the said company to transport himself, his family, and friends from Guyencourt, Del., to Jacksonville, Fla., the said car having been supplied with provisions and furnished with a conductor and porter and transported over other roads at the expense of said company. At the time the said property was used as aforesaid the said railroad was in the hands of a receiver appointed by the said Charles Swayne, judge of the district court of the United States for the northern district of Florida. The accounts of the said receiver, containing this expenditure as aforesaid, were passed upon and allowed by the said Charles Swayne.

The said Charles Swayne further misbehaved himself by attempting to justify the use of the property as aforesaid by claiming that he had a right to use it because the railroad and its property were in the hands of the court. [Laughter.]

Now, maybe you think that is a joke, but I want to read the testimony of Judge Swayne on that subject:

By Mr. PALMER:

Q. You said this car was one of the cars in possession of the court, because the road was in the hands of a receiver?—A. Yes.

Q. You said that it was the privilege of the court to use that car, because the road was in the hands of a receiver?—A. Yes; that was the reason why it was used.

Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?—A. The receiver, in talking that over with me, stated that it was generally understood that a car was in better condition running than if it were standing idle on a siding.

[Laughter.]

I thought I was lawyer enough to see he had not answered it.

Mr. PALMER. Will the stenographer read that question, please?

The STENOGRAPHER (reading). "Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?"

Mr. PALMER. That is the question.

The WITNESS. Yes, sir. I had ten railroads in my hands as judge in six years.

Mr. PARKER. Will the gentleman read the next question?

Mr. PALMER. Yes; you can read it for me.

Mr. GILLETT of California. I will read it.

Q. And you fancied you had the right to use the property of any of the railroads that were in the hands of the court whenever you pleased without rendering any compensation to the railroad for it?—A. I did not say that.

Mr. PALMER. How does that qualify what he stated?

Mr. GILLETT of California. That is what he said.

Mr. PALMER. He said he had the right to use that property, because it was in the hands of the receiver, because the railroad was in the hands of the court; that is what he said and stuck to it.

Mr. MANN. And he did it?

Mr. PALMER. He did.

Mr. RICHARDSON of Alabama. Will the gentleman allow me to ask if he charged up the expense against the receiver?

Mr. PALMER. The receiver took credit for it when he settled his account; of course he provisioned this car and put on a porter and conductor at the expense of this railroad company, and got the car passed over the different railroads between Jacksonville, Fla., and Guyencourt, Del. In other words, this man took out of the assets of the bankrupt company, which were in his hands or in the hands of the court, which he was bound to administer for the benefit of the creditors, several hundred dollars, because it costs about a hundred dollars a day to run a private car if a private person has to pay for provisions and transportation. He took a sum out of the assets of that company and applied it to his own use, the use of his family and friends. The car came to Guyencourt, Del., and took Judge Swayne and Judge Swayne's wife's sister and her husband and transferred them, at the expense of the railroad company, to Jacksonville, Fla.

Mr. GILBERT. Was it an inspection trip?

Mr. PALMER. Not of the Jacksonville, Tampa and Key West. He passed over two or three different railroads between Jacksonville and Guyencourt.

Mr. FINLEY. I thought he perhaps merely inspected the condition of the road.

Mr. PALMER. No.

The said Charles Swayne further misbehaved himself in that he used the car above mentioned to transport himself, his family, and friends from Jacksonville, Fla., to the Pacific slope, the said car, a porter, or cook, and some liquid supplies, and transportation over other roads having been furnished at the expense of the said railroad company. The said Charles Swayne also justified the use of the said car upon the grounds aforesaid.

I do not think it necessary to make any further comment on that subject.

That the said Charles Swayne has been guilty of a high misdemeanor, viz, in obtaining money from the Treasury of the United States by a false pretense.

The said Charles Swayne was entitled by law to be paid his reasonable expenses incurred in travel and attendance when holding court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were $10 per diem while holding court at Tyler, Tex., forty-one days from January 21, 1903, and received therefor from the Treasury of the United States, by the hand of the United States marshal, the sum of $410, when the reasonable expenses of the said Charles Swayne, incurred and paid by him during said period, were much less than said sum, total for board and lodging, the sum of $1.25 per diem, amounting to $51.25, and for traveling expenses in going and returning from the said court, not to exceed $50, in all $101.25.

Mr. LACEY. I would like to ask the gentleman a question in this connection. Does he have a copy of any of the certifications complained of here? They do not seem to be printed in the record.

Mr. PALMER. I have a copy of the certificate.

Mr. LACEY. I would like to ask what the form of certificate was that he is charged with misstating the facts?

Mr. PALMER. He certified that he had expended the sum of $10 a day, or some $400 for forty days, for necessary expenses of attendance and travel. That is the form of certificate. It is

a printed form that is used in the Department. The certificate was not put in the evidence because counsel for Judge Swayne admitted he had made use of the regular legal certificates in all these cases.

Mr. LACEY. Is this the usual certificate used by any district judge—the printed blank furnished by the Treasury Department?

Mr. PALMER. They have a printed form, and every judge has to certify how much his reasonable expenses for travel and attendance are—not his actual expenses; it is his reasonable expenses—and it turned out that Judge Swayne held court out of his district seven hundred and forty-five days in the eight years, and that he charged $10 a day for every day; that is to say, he received $7,450 for holding court outside of his district as expenses, and he received close to a thousand dollars a year over and above his salary.

The same charge was made against him where he held court at Tyler, Tex., where the charge was for $310 expended. According to the testimony, he paid $77.50 for lodging; $50 for traveling expenses, which would cover from Pensacola; in all, $127.50. In one case he got a rebate on his board bill of 10 or 15 per cent. The usual charge was $2.50 a day, or something like that, and in the certificate he put in a bill of $110, which was paid for $97.

Mr. ADAMS of Pennsylvania. Will my colleague permit me to ask him a question?

Mr. PALMER. Certainly.

Mr. ADAMS of Pennsylvania. Does the gentleman know if it is customary among United States judges to charge the maximum?

Mr. PALMER. No, sir; and if it was customary that would be no evidence in this case. We are trying the case of Charles Swayne—not other judges.

Mr. ADAMS of Pennsylvania. I am only asking for information.

Mr. PALMER. And I am giving it to you. [Laughter and applause.]

Mr. LACEY. I would like to ask whether there is any testimony before the committee showing that this statute is construed that there should be $10 allowed for reasonable expenses and attendance, and it is fixed as not beyond $10? The word used, "attendance," so far as the expense was concerned, was not that part of the compensation for holding the court?

Mr. PALMER. What do you mean?

Mr. LACEY. That $10 meant that it covered compensation. Is not that the construction that is put upon it?

Mr. PALMER. No, sir.

Mr. OLMSTED. Does not the act also say that he shall have no compensation for holding the court out of his district?

Mr. PALMER. The act of Congress forbids a judge from receiving any compensation for holding court out of his district. He is paid a salary for his services.

Mr. LACEY. I only wanted to see how it is construed by others.

Mr. PALMER. The act provides that they shall not get any other compensation.

Mr. LACEY. It was passed on an appropriation bill, and is for traveling expenses and attendance.

Mr. PALMER. It is for "reasonable expenses of travel and attendance." That was limited formerly by the act of 1881, which was construed to give "actual expenses," but this act gives him his "reasonable expenses."

Mr. OLMSTED. I will ask my colleague whether instead of the act providing, as the gentleman from Iowa said, that the charge is for "attendance," it is expressly stated for "reasonable expenses of his attendance?"

Mr. PALMER. The act of 1896, the sundry civil appropriation bill, provides for—

> Reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges.

Mr. HITCHCOCK. The gentlemen on this side of the House would like to ask the gentleman from Pennsylvania if he would talk a little louder, so that he can be heard.

Mr. PALMER. If the gentlemen on that side will keep a little stiller, I think I could be heard.

Mr. HITCHCOCK. It is not a question of keeping a little stiller, but of the gentleman talking a little louder.

Mr. PALMER. If the House will keep a little stiller, I will try to talk a little louder.

The judge must certify, under that statute, before he can get the money from the marshal, what his reasonable expenses have been for traveling and attendance.

Mr. LACEY. Now, I will ask the gentleman if in the same district and in the same circuit it has been the uniform practice of the other judges to charge the fixed sum, this $10 a day; so that if we are going to impeach this man for that, why, the House ought to have a job lot of impeachments, covering the whole district or circuit. I will ask whether the committee looked into that.

Mr. PALMER. No; we didn't look into it, and we didn't need to; it would not have been relevant or competent; when one man is charged with larceny, it is not relevant to see if somebody else has been guilty of the same thing. This is briefly the plain statute, and if a judge will certify that his expenses have been $10 a day and he has paid $10 per day then he is entitled to it, and if he hasn't paid that he is not entitled to it.

Mr. CLAYTON. Will the gentleman permit me, in that connection, to refer him to the case of Dunwoodie against The United States (22 Ct. Cls., 269, 278), where it was held:

> "Expenses," as used in an act appropriating money for salaries and expenses of the national board of health, means those expenses which are necessarily incident to the work directed to be done, including payment for clerk hire or office rent.

And in Heublein *v.* City of New Haven (54 Atl., 298, 299; 75 Conn., 545), where it was held that:

> The word "expenses," as used in a city charter providing that the selectmen shall receive a certain sum per hour for the time spent in their duties, and their necessary expenses, means something due to the selectman for money paid by him or debt incurred by him necessarily in the performance of his duty.

And also in the case of the United States *v.* Shields (153 U. S. Rep., p. 91), where it is said:

> It is true in the present case that the district attorney has made no claim for a per diem allowance for Sunday, but it certainly can not be held that this left it optional with him to waive his per diem fee and take mileage to and from his home in lieu thereof as a matter of pleasure or convenience to himself, especially when the mileage exceeded the per diem allowance. Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts nor to any discretionary action on the part of the officials.

Mr. PALMER. Tenth, that the said Charles Swayne has been guilty of a high misdemeanor in obtaining money from the Treasury of the United States by a false pretense, in that the said Charles Swayne was entitled by law to be paid his reasonable expenses incurred in travel and attendance when holding court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were $10 per diem while holding court at Dallas, Tex., forty days from January 21, 1896, and received therefor from the Treasury of the United States, by the hand of the United States marshal the sum of $400, when his reasonable expenses incurred and paid by the said Charles Swayne did not exceed $125 for board, lodging, laundry, express, telegrams, and drugs, and not to exceed the sum of $50 for traveling expenses in going and returning; in all, the sum of $175.25.

Eleventh, that the said Charles Swayne has been guilty of a high misdemeanor in obtaining money from the Treasury of the United States by a false pretense.

The said Charles Swayne was entitled by law to be paid his reasonable expenses incurred in travel and attendance when holding court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were $10 per diem while holding court at Tyler, Tex., thirty-one days from December 3, 1900, and received therefor from the Treasury of the United States, by the hand of the United States marshal, the sum of $310, when the reasonable expenses incurred and paid by the said Charles Swayne did not exceed $2.50 per diem for board and lodging, amounting to $77.50, and $50 for traveling expenses going and returning, not to exceed $127.50 in all.

In support of the first charge, viz, that Judge Swayne violated the act of Congress which makes it a high misdemeanor for a district judge not to reside in his district, the testimony shows that Judge Charles Swayne was appointed district judge of the United States for the northern district of Florida in 1890. At that time the boundaries of the district included St. Augustine, where he resided. In the year 1894 the boundaries of the district were changed by an act of Congress, and St. Augustine and Jacksonville were included in the southern district, leaving Pensacola and Tallahassee as the only places at which a United States court was held in the northern district.

From the time the boundaries of the northern district were

changed until the year 1903 Judge Charles Swayne boarded at hotels or boarding houses in Pensacola and Tallahassee during the times his court was in session, except a portion of the year 1900, about two or three months, when he lived with his family in Pensacola, in a house rented by his wife. The testimony establishes the fact that substantially he was not in the district at any other time except when his court was in session. From 1896 to 1904 his court was open for business four hundred and ninety-two days, being the average of sixty-one and one-half days per annum for eight years. No testimony was offered to show how many days the court was open or closed during the years 1894 and 1895.

In the year 1903 his wife purchased a house in Pensacola. There is no evidence that he has occupied it, or that he has ever been registered, paid taxes, or voted in the northern district of Florida since the boundaries of the district were changed, or that his family has been there, except a part of one winter.

Upon the part of Judge Swayne, a witness testified that he had, at the request of Judge Swayne, endeavored at different times between 1894 and 1903 to find a suitable house in Pensacola which he could purchase, and at one time endeavored to get a house built for him, but that he had not succeeded in either effort.

Judge Swayne testified that when he first went to Pensacola he asked a man connected with a bank to have his name placed on the registry. It was not done. Judge Swayne admitted that he never was registered in the northern district of Florida, never paid a tax, voted, or in any manner exercised the rights of citizenship. After making the request of a person not connected with the registration of voters, he never inquired to find if it had been done. He stated to at least one person that his home was at Guyencourt, Del.; that was the place where he went when court was not in session in Florida, or when he was not holding court in other States.

From the testimony in the case it is clear that Judge Swayne has never acquired a legal residence in the northern district of Florida, nor has he actually resided there, within the meaning of the act of Congress, which is as follows:

A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

This act needs no interpretation. Its purpose is plain. A nonresident judge can not perform the duties of his office properly or rightfully administer justice to the people of his district. Whether he can or not, the law requires him to live there, and makes him guilty of a high misdemeanor if he does not obey it. There is sufficient evidence, if evidence were needed, to satisfy your committee that the continued absence of Judge Swayne subjected lawyers and suitors to inconvenience, delay, and expense, and in some cases amounted to a denial of justice. Let it be granted that there is not; let us suppose that no one suffered harm. We do not find that Judge Swayne is therefore to be excused from obeying the law. No exception is contained in the act; we can not write one in for his benefit.

Judge Swayne does not claim that he had a residence in his district from 1894 to 1903. His testimony is rather in the nature of a series of excuses for not having it. He says he authorized his clerk to look for a house in Pensacola; that he spoke to a bank cashier about being registered; that he was always ready to go back to his district when needed; that he was called to hold court elsewhere; that other southern judges go North in the summer season. All this does not excuse Judge Swayne for noncompliance with a highly penal statute. It ill becomes a judge to set up excuses for disobeying the law. After the Florida legislature had acted and passed the condemnatory resolution upon which this proceeding is founded, he apparently awoke to the fact that his plain duty in respect to residing in the district had been neglected. His wife purchased a house in Pensacola. The evidence does not show that he ever even lived in that house. This statute is as binding upon Judge Swayne as any other law upon the statute book. If he may violate this act with impunity, he ought to be allowed exemption from obedience to all laws.

It may be conceded that residence is ordinarily a question of intention. A man's legal residence is, doubtless, where, after having gained a residence, he intends to reside. But in order to comply with this statute we submit that there must be something more than an intention on the part of a judge to reside in his district. There must be an actual as well as a legal residence. One may establish and have a legal residence in the United States and remain continuously abroad any number of consecutive years without losing it; but such a constructive or legal residence certainly would not answer the purpose of this statute, which clearly was to secure the bodily presence of the judge within his district where the people who had need of his official services could have them.

It has been said that the word "residence" is an elastic term of which an exhaustive definition can not be given, but that it must be construed in every case in accordance with the object and intent of the statute in which it occurs. (Eng. and Am. Enc., p. 696.)

It may happen that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion. In such case the place where he happens to be constitutes his residence so long as he is there, and ceases to be such as soon as he leaves for the other place. (Ibid., 699. Walcott *v.* Bolfield, 1 Kay, 534; 18 Jurist, 570; Stout *v.* Leonard, 37 N. J. L., 492.)

In the case of The People *v.* Owen, 29 Colorado, 535, it was held that when a statute requies a district judge to reside in his district the residence contemplated was an actual as distinguished from a legal or constructive residence.

Judge Swayne offered himself as a witness upon this question after the committee came to Washington after visiting Florida. He was sworn, and his testimony was as follows:

Mr. PALMER. Judge Swayne will proceed and will make his statement to the stenographer.

Judge SWAYNE. I was born in 1842 in Delaware, and resided there with my parents. I read law in Philadelphia and was admitted to the bar and took my degree of B. A. in the Pennsylvania Law School. I practiced law there, with the exception of one year, until 1885, when I removed with my family to Sanford, Fla. I practiced law there until 1887, when I was burned out, when I removed with my family to the county seat, where I was residing when appointed to the bench on May 17, 1889. I took the oath of office June 1, 1889.

Mr. PALMER. That was a recess appointment, was it not?

Judge SWAYNE. Yes, sir; I can not tell positively what date I was confirmed. The confirmation came up before Congress the following December, and in consequence of the election trials, which had taken place in the meantime, the confirmation did not occur until April 1, 1890. I addressed the Senate on the subject, which can be seen by the CONGRESSIONAL RECORD of the first session of the Fifty-first Congress, volume 21, February 21, 1890, and which was a very interesting debate, showing exactly what the questions were. In the summer of 1890 I moved to St. Augustine. I think we arrived there the 1st of October, having been North on a vacation, as was the custom of most of the Federal judges, perhaps of all of them, to take such vacations.

I resided in St. Augustine with my family, and about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity, they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July, I went with my family to Europe. In the spring, in 1900, I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

Mr. GILLETT. Was that in 1890?

Judge SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex,, and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case and then came back, as his condition was very critical and serious, and, after a week or two, perhaps, I returned and held court and finished what I had to do and got back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that had been formerly occupied by Judge A. C. Blount, in Pensacola, and moved in it the 1st of October.

I never was a registered voter and I have not voted in fourteen years. When I left Delaware I moved my domicile and have taken no part in political questions arising in the State of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in thirty-six hours, and the record will show I have always been there to attend to anything of a serious nature.

My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

Mr. GILLETT. Did the business of the court suffer because of your absence?

Judge SWAYNE. I never heard of it.

Mr. GILLETT. The summer time was the time usually taken for vacations?

Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.

Bearing in mind that Judge Swayne is presumed to be learned in the law, and that he is fully aware of what is needful to enable a man to gain a legal residence and also to maintain an actual residence in a given place, it is apparent that he does not claim that, prior to 1903, he had either gained a legal or maintained an actual residence in the northern district of Florida. His testimony is prolific of reasons why he did not do so.

Apparently he had an actual and legal residence in St.

Augustine, which was in his district before the boundaries were changed. After that event he broke up housekeeping and stored his furniture; then being advised, as he states, by some of his friends that the next or some succeeding Congress would be Republican and that the boundaries of his district would be extended. After that he attended the session of his court at Pensacola and Tallahassee, living at different boarding houses or hotels, being present substantially at no time except when court was in session. When he left Florida he states that he always left directions with his clerk that he would come back if needed. Correspondence was addressed to him at Guyencourt, Del.; that place he spoke of as his home. To that place he returned when his labors in his district were ended or after he concluded terms of court in other States. He had live stock and personal property at Guyencourt, in Delaware. His family generally lived there; sometimes abroad. In the year 1900 his wife rented a house in Pensacola and lived there with her husband a portion of the winter, going North with him about the holidays. Rent was paid for the house a year or more, but it was not again occupied by him or his family. He spoke to a bank cashier about being registered, but the bank cashier had nothing to do with the registration; that was an act which, under the law, must be attended to personally.

Judge Swayne never was registered. When there, did he gain even a legal residence in the northern district of Florida? Has he ever gained such a residence? His actual residence was measured by about sixty days in each year. Did he gain a legal residence when he broke up housekeeping and stored his furniture awaiting the time when a Republican Congress would change the boundaries of his district, so that he would not need to move away from St. Augustine? Did he gain a legal residence when he asked the bank cashier about being put on the register of voters? Asking his clerk to find a suitable home for him to rent or purchase evidenced his intention to reside in Pensacola when such a house was found. It did not gain a residence for him while the fruitless search progressed. It may be gathered from Judge Swayne's testimony that he intended to reside in Pensacola some time when he could buy or build a house.

There was no place in the northern district of Florida where legal service of process could have been made on Judge Swayne during the ten months of each year when he was absent from the State. The fact that Judge Swayne held court in other States, being assigned to do so by the circuit judge, does not tend to show that he had or had not a residence in his district. If to be present in the district during the time necessarily spent in holding the terms of court fixed by law, in March and November of each year, was to reside in the northern district of Florida, within the meaning of the act that requires a judge to reside in his district, under penalty of being guilty of a high misdemeanor if he does not, then Judge Swayne has complied with the law and is not subject to be charged on that ground. If he has persistently and continuously evaded and refused to obey this law, according to its plain intent, as the committee find from the testimony, then he should be impeached and sent before the triers.

Your committee can see no reason for overlooking or excusing his default. The law itself measures the grade of Judge Swayne's offense. It is a high misdemeanor. For that, by the express words of the Constitution, he is impeachable. It is not for the House of Representatives to seek for excuses exonerating a judge for a plain violation of statutory law, but to charge him before the tribunal fixed for the trial and let him abide the consequences of his act. If the Senate chooses to regard his excuses and exempt him from just punishment, the House will have done its duty to the people, and responsibility for miscarriage of justice will rest elsewhere.

In support of the second and third charges, viz, that Judge Swayne arbitrarily, unjustly, and unlawfully fined and imprisoned E. T. Davis and Simeon Belden, attorneys at law, the facts of the cases, as set forth by the testimony, are as follows:

In the year 1901 an action of ejectment was pending in the circuit court of the United States at Pensacola in which Florida McGuire was plaintiff, and the Pensacola City Company and numerous individuals, among them W. A. Blount and W. Fisher, attorneys at law, were defendants for a tract of land called the "Rivas or Chavaux tract." The plaintiff's lawyers were Louis Paquet and Simeon Belden, of New Orleans. In the month of October, in the year 1901, Paquet and Belden joined in a letter to Judge Swayne, which they addressed to him at the place where he resided when not holding court in his district or elsewhere—viz, Guyencourt, in the State of Delaware—stating that they had been informed that he, the said Charles Swayne, had purchased a portion of the land in controversy in the said ejectment suit—viz, block 91, in the business part of the city of Pensacola—and requesting him to recuse himself and arrange for some other judge to preside at the trial of the case. To this letter no answer was returned by Judge Swayne.

At the term of court which convened at Pensacola in November Judge Swayne announced on the 5th of November that a relative of his had purchased the land, but later in the week he volunteered from the bench that the relative was his wife, and that she had purchased the land with money obtained from her father's estate; that the bargain had not been concluded for the reason that the owner, Mr. Edgar, offered a quitclaim deed. The evidence shows that the agents of Edgar, with whom Judge Swayne negotiated the purchase of block 91, and also of another lot, wrote him stating that Edgar would not give a general warranty because the land was part of a tract which was in dispute. Swayne answered saying that they might drop out block 91 without stating a reason. The agents had pending in October, when the letter to Swayne was written, a suit in the State court against Edgar for commission on the sale to Swayne. The agents had taken Judge Swayne over the tract, and had agreed upon the terms and had sold block 91 to him.

The custom in Judge Swayne's court was to dispose of the criminal calendar first, and when that was concluded to call the civil list and set the cases for trial at convenient times in the future. The criminal cases were not concluded at the November, 1901, session until about 5 o'clock Saturday night. Judge Swayne then took up the civil list, upon which the case of Florida McGuire appeared, and made a further statement that the member of his family who had contracted through him for block 91 was his wife, and that she was purchasing with money derived from her father's estate. He declined to recuse himself, and stated that the case would be heard on the Monday following unless legal ground for continuance was laid.

The plaintiff's lawyer, Paquet, asked that the case should be set down for Thursday of the following week, averring that it was too late to summon witnesses that night; that Sunday they could not be summoned, and therefore the case could not be ready on Monday. This request was refused by Judge Swayne, who insisted that the case should go on on Monday. At about 5.30 or 6 o'clock the court adjourned. Neither Simeon Belden nor E. T. Davis was present in court at any time when Judge Swayne made announcement concerning his connection with the purchase of block 91, Belden being ill with facial paralysis and confined to his bed at the hotel in Pensacola. E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock. During the evening Paquet drew up the necessary papers to commence an action of ejectment in the county court of Escambia County, Fla., against Judge Swayne for this block 91, upon the theory that he had contracted for the land with Edgar, who claimed to own it, and who had admitted that he was in possession and that the contract was subsisting between them, and that the title of the alleged owner could be tried out in the State court, where the parties would get better justice, Swayne standing in the shoes of Edgar. They took the liberty of believing, from all the evidence, that Judge Swayne was the real purchaser, though he had said that the title was to be taken by his wife.

The papers were taken to Simeon Belden at his hotel where he was ill, and he signed them. E. T. Davis was employed to bring this suit. At the same time it was agreed that the suit of Florida McGuire in Judge Swayne's court should be dismissed on Monday. Davis was engaged to do it, Paquet having been called to New Orleans by sickness in his family. The suit against Judge Swayne was brought that Saturday night and the process served on him. On Monday, at the opening of the court, Mr. E. T. Davis asked for and obtained from Judge Swayne an order dismissing the suit of Florida McGuire. Immediately Mr. W. A. Blount, esq., one of the defendants, and also attorney for defendants, arose and suggested that Paquet and Belden, attorneys for Florida McGuire, and Davis, who appeared to ask for a dismissal of the suit, had been guilty of contempt of court for bringing suit against Judge Swayne in the county court of Escambia County. This action was in pursuance of a previous conference between Blount and Swayne held before court convened, when it was agreed upon. Judge Swayne ordered a rule to show cause upon an unsworn statement prepared by Blount, which was served on Davis and Belden, Paquet being absent. The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

Some testimony was taken to show that the suit against Judge Swayne had been brought and process served on him Saturday night about 8 o'clock; that was all. Whereupon Judge Swayne proceeded to adjudge Belden and Davis guilty of the "charges which were in violation of the dignity and good order of the

said court and a contempt thereof," and after some abusive remarks sentenced them to be disbarred for the term of two years, to pay a fine of $100 each, and to undergo an imprisonment for the period of ten days in the county jail.

They were duly committed and remained confined three days, when they were released pending a habeas corpus allowed by Judge Pardee, of the circuit court. That habeas corpus case resulted in a decision that Judge Swayne had jurisdiction of Belden and Davis in a contempt proceeding, as the averment in the paper filed by Blount was that they were officers of the court, and therefore the circuit court could not question his decision, his findings of fact, or the correctness of his judgment that they had committed a contempt, except in so far as he had exceeded his jurisdiction by imposing both fine and imprisonment, the statutes providing in certain cases for fine or imprisonment as a punishment for contempt. To that extent the decision of Judge Swayne was reversed and the culprits allowed to choose which they would suffer, fine or imprisonment. Belden, who was a very sick man, about 70 years of age, chose to serve out his sentence in prison; Davis paid the fine of $100.

I am of opinion that Judge Swayne was guilty of gross abuse of judicial power and misbehavior in office in this case. I believe that he had no authority or right to adjudge Simon Belden and E. F. Davis guilty of a contempt of court under the circumstances of the case.

Second. That if authority can be found in the law for holding the action of these attorneys a contempt, that in the absence of evidence of intent to commit a contempt other than that to be gathered from the fact that the suit was brought Saturday night and the process served the same night, and in the face of their answer that no contempt was thought of or intended, to adjudge them guilty was a gross abuse of power.

Third. That the sentence imposed by Judge Swayne was unauthorized and unlawful. It can be accounted for only on the theory that the judge imposing it was ignorant or vindictive.

The statute conferring power upon the court of the United States is as follows:

> The said courts shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

In his address to the subcommittee Judge Swayne was asked to point out the part of the statute which conferred the authority for his action. He said: "The words 'the misbehavior of any of the officers of the said courts in their official transactions.'"

At the time he sentenced Davis and Belden Judge Swayne declared that the contempt did not consist in bringing the suit in the State court; that the attorneys had a perfect right to sue him there, but that his belief was that the suit was brought to force him to recuse himself in the case of Florida McGuire.

It must be remembered that at the time the sentence was pronounced, indeed, before the contempt proceeding was commenced, the case of Florida McGuire had been ended by the consent of Judge Swayne, upon motion of E. T. Davis, for the plaintiff, and that the agreement to end the case had been reached by the lawyers, Paquet, Davis, and Belden, before the suit was instituted against Swayne in the State court on Saturday. How, then, could their action in bringing that suit be construed into an attempt to force Judge Swayne to recuse himself in the case of Florida McGuire? Such a pretense was idle, especially in view of the fact that the purpose to arrest and punish these men for contempt of court had been formed and agreed upon between Blount and Swayne in the morning before court met and before either could know that the Florida McGuire case was to be dismissed by the plaintiffs. The accused lawyers had a right to bring the suit. Their motive could not have been to affect in any way the disposition of the Florida McGuire case in Judge Swayne's court, because that case being ended could not be affected or the conduct of the judge influenced thereby.

There was no testimony before the court from which a conclusion as to the motives of the accused could be judged except the fact that the suit had been brought in the State court Saturday night and the process served that night. The fact, viz, that the process was served Saturday night was, in Judge Swayne's eyes, according to his statement before the committee, the chief gravamen of the offense. From that fact he concluded that the motive of the accused was to "insult the dignity and disturb the good order of his court." The committee is of opinion that there was no evidence before Judge Swayne from which such a motive could be inferred, certainly not from the facts in evidence before him.

The words under which he claims the right to condemn have been quoted, but they do not fit the case. They are the "misbehavior of any of the officers of the said courts in their official transactions." The act complained of was not done by these men as officers of the district court of the United States. They were acting as officers of the court of Escambia County, Fla., in bringing the suit. Therefore the action was not susceptible of being construed as a contempt of the district court. It was not an official transaction in any sense by officers of the United States court. Their character as officers or attorneys of that court gave them no power to do the act complained of. It was only because they were attorneys of the court in which the suit was brought that they could do it.

If it was an "official transaction," it was an official transaction in the county court of Escambia County, not in the district court of the United States. Certainly no one will contend that Judge Swayne could punish them for an official transaction in another court, no matter how offensive it might be to his dignity or humiliating to his pride or disgracing to his character; certainly such an act could not offend against the "dignity or good order of his court."

If, then, they could not be properly fined and imprisoned for bringing the suit, what offense did they commit that warranted such severe and disgracing punishment?

But it may be contended no judge can be held responsible for a mistake of law. All judges make mistakes. For an error of judgment or wrong exercise of discretion a judge ought not to be and can not be punished. Let this contention be granted. At the same time, none can dispute that for a misbehavior in office a judge may be impeached.

All the cases that have been tried may be cited as proof of that proposition.

Judge Pickering was impeached by the House and convicted by the Senate for releasing the ship *Eliza* to her owner without taking a bond after she had been seized for violating the excise law, and for appearing upon the bench when drunk, and for using profane language.

Judge Addison was impeached and removed from office for refusing to allow an associate judge to address a grand jury and a petit jury.

Judge Chase was impeached for refusing to allow counsel to address the court and jury upon a point of law that had already been decided.

Judge Peck was impeached for disbarring and imprisoning a lawyer who wrote and published a criticism of one of his opinions.

In all these cases the defense was stoutly made that they were mere mistakes of law, not indictable, and therefore not subject for impeachment. It did not avail to prevent the House from preferring charges. If this reason is good, then no judge can be called to answer for a misbehavior in office which is not also an indictable offense. This is not the law nor the practice.

In imposing sentence upon Davis and Belden Judge Swayne exceeded his authority by imposing both fine and imprisonment. This error was set right by Judge Pardee, the circuit judge, but not until both had served three days in the common jail.

The animus and evil intent of the judge was manifest by his action and speech. So eager was he to punish that he disbarred these lawyers for a term of two years. If his amicus curia, Blount, had not warned him, that unlawful sentence would have remained. His speech when imposing sentence is described by the witness.

> Simeon Belden testifies:
> Q. Now, I will ask you what was the manner of Judge Swayne when he was inflicting this penalty?—A. Well, it was gross and offensive; he entered with a slanderous attack on the attorneys.
> Q. Very slanderous?—A. Yes.
> Q. Tell what he said.—A. I don't recollect his words exactly; it was published in the newspapers here.
> Q. It was harsh and offensive?—A. Very, indeed. (P. 264–265.)
> E. T. Davis, page 284:
> Q. At the time of imposing this sentence what was Judge Swayne's manner?—A. Very abusive.
> Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant, said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.
> Q. His manner was very harsh and abusive?—A. Extremely so.

For a constructive or indirect contempt it is the law that one charged may purge himself, and that he can not thereafter be punished. In this case Judge Swayne listened to no excuse. He found an evil motive for a lawful action without evidence and against the oath of the accused. The excessive and unlawful character of the sentence and the grossly offensive manner in which it was pronounced leave no room for doubt that Judge Swayne was not animated by a desire to protect the dignity and good order of his court, but to punish what he considered a per-

sonal affront to himself. This constituted an arbitrary, unlawful, and oppressive abuse of his judicial power and a high misdemeanor in office.

The fact can not be disputed that Judge Swayne imposed a punishment on Davis and Belden which the law did not warrant. The only question in the case, then, is whether he is to be excused and go unpunished on the ground that he made an innocent mistake of law. No one doubts the proposition that a judge can not and ought not to be held responsible for innocent mistakes of law. Neither can anyone justly contend that a judge should not be punished according to law for knowingly and willfully imposing an illegal sentence. Whether his motive be revenge, or mere wanton disposition to exercise arbitrary power, or an intention to punish for a personal insult, in either case he can not be held guiltless or excused on the plea that he innocently erred.

The great question, then, in every case that arises must be, Why did he do it? What motive prompted? What intent animated? Being a human being and not divine or infallible, the actions of a judge are to be interpreted by the same rules that apply to the actions of other men. It is not to be supposed that a judge who evilly intends to do an unlawful act will declare his intention or publish his purpose. The motive and intention of a judge must therefore be sought, and generally will be made plain by the circumstances surrounding the particular case. If a judge has no personal interest or feeling in a matter under consideration, if coolly, calmly, and with deliberation he reasons himself into giving a wrong judgment, a wrong motive is never or rarely ever attributed to him. On the other hand, if the case involves a question of insulted dignity, a personal affront, or, if with heat and passion, if with vituperation and denunciation, a judge imposes a harsh and unlawful sentence upon a prisoner, his motive is not a matter of doubt. His motive is as plain as that of a man who assaults with a deadly weapon. Such a man is held responsible for the natural and reasonable consequence of his act. He can not be heard to say, "I made a mistake; I thought I had a right to strike with a club a blow which produced death." The law pronounces a layman and a judge who knowingly does an unlawful act conclusively guilty of an unlawful intent.

Apply these principles to the case in hand. Judge Swayne knew that the act of 1831 limited the powers of United States courts over contempt to the special cases named in the act. He knew it, because the Supreme Court of the United States has many times decided the very point, notably in 19 Wallace, 511, where it is said:

> The act of 1831 is therefore to them (the district courts) the law specifying the cases in which summary punishments for contempt may be inflicted. It limits the power of these courts in this respect to three classes of cases—
> First. Where there has been misbehavior of a person in the presence of the court, or so near thereto as to obstruct the administration of justice;
> Second. Where there has been misbehavior of any officer of the court in his official transaction; and,
> Third. Where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful process, order, rule, decree, or command of the courts. And thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes.

Presuming that Judge Swayne knew the law, he knew that proceeding for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (Burke *v.* The State, 47 Ind., 528; Batchelder *v.* Moore, 42 Cal., 412; Rapalje on Contempts, p. 122.)

> The most common and, in the United States, the almost universal practice in this matter is to present to the court an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (Burke *v.* State, 47 Ind., 528; Re Judson, 3 Blatch., U. S., 148; Batchelder *v.* Moore, 42 Cal., 412; Whittem *v.* State, 36 Ind., 196.)

Judge Swayne knew that issuing of process without filing the proper affidavit was erroneous and that the error is not cured by a subsequent filing thereof. (Wilson *v.* The Territory, 1 Wyo., 155; Whittem *v.* The State, 36 Ind., 196; McConnell *v.* The State, 46 Ind., 298.)

He knew that in a rule to show cause why a person shall not be punished for contempt the actual intention of the respondent is material, in which respect it differs from an indictment for the like offense. Therefore, when the respondent meets the words of the rule by disavowing, upon oath, any intention of committing in contempt of court the rule must be discharged. (63 N. C., 397.) He knew that the practice in the courts of the United States, as well as in the State courts, was:

> If the party purge himself on oath the court will not hear collateral evidence for the purpose of impeaching his testimony and proceeding against him for contempt, but if perjury appear the party will be recognized to answer. (U. S. *v.* Dodge, 2 Gall., 313 Circuit Court U. S. 1st Circuit, Mass.; in the matter of John I. Pitman, 1 Curtis, 189, contempt proceedings.)
> The master did not treat the answer of the clerk as evidence. This was erroneous, as will plainly appear when we consider what this proceeding is. * * *
>
> Now, one of the most important privileges accorded by the law to one proceeded against as for contempt is the right to purge himself, if he can, by his own oath. So rigid is the common law as to this that it does not allow the sworn answers of the respondent to be controverted as to matter of fact by any other evidence. (U. S. *v.* Dodge, 2 Gall., 313.)

The rule was the same at common law:

> If any party can clear himself upon his oath he is discharged. (4 Bl. Com., 286, 287; Burke *v.* The State, 214 Ind., 528.)
> When the answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disrespect to the court of purpose to obstruct its process the rule should be discharged. (In re Wilson Walker, 82 N. C., 95.)

Knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount. He put upon the record another statement of his own, presumptively as evidence or as a justification of his act—an unsworn statement of alleged facts, some of which were true and some untrue.

He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt, and without any evidence whatever to establish the fact, except that they had brought a suit against him in the State court and served him with process Saturday night. He condemned them to be disbarred two years, to be fined, and cast into prison. The charge against them, and of which they were convicted, was a contempt of the "dignity and good order" of the district court of the United States. The offense consisted, as stated by Judge Swayne, not in the act, but in the intent with which it was done, viz, to force him to recuse himself in the case of Florida McGuire.

Suppose, for the sake of argument, that such was their intention, viz, to force the judge to recuse himself. The intent was never carried out. No one was harmed. The judge was not forced to recuse himself. The suit against him in the State did not exercise any influence on him in that direction, for the very good reason that the suit in his court was disposed at the request of the plaintiff, with his consent, at the opening of the court on the first secular day after the suit was brought against him in the State court. The law does not punish guilty intentions. One may intend to slander, steal from, or even kill his neighbor. If the intent is never carried out no human law exists to punish.

All these plain and common principles Judge Swayne must be presumed to have known. Therefore he knowingly and unlawfully held these attorneys guilty of a contempt when none had been committed, when none could have been committed which were punishable under the act of Congress, and he did it in violation of the well-established law of procedure in such cases.

We are seeking for the motive which actuated Judge Swayne in the light of the circumstances. He must have known that he had no right to impose a fine and also an imprisonment upon these officers of his court. The act of Congress is very plain. A wayfaring man, though a fool, need not err there. It provides fine or imprisonment, not fine and imprisonment. The Supreme Court, with whose decisions Judge Swayne will not plead that he was not familiar, has also settled that point. (See 131 U. S., 267.)

Again, still in search of the motive of Judge Swayne in imposing his unlawful punishment, attention is called to the fact that he sentenced these lawyers to disbarment for two years; in other words, to ruin. To forbid a lawyer the right to practice his profession for two years is, standing alone, a severe sentence. Such a sentence will scatter a lawyers practice; seriously damage, if not irretrievably ruin, his reputation, and generally destroy his usefulness and earning power. Ought Judge Swayne be heard to say that he knew no better? Evidently if he might it would be true, because when his amicus curia stepped up to the bench and suggested that he had exceeded his authority he remitted that part of the sentence. He ought not to be heard to plead his ignorance, because the highest court decided (19 Wallace, 512) that punishment by disbarment could not be imposed under the act of 1831. The fact that he found it in his heart to impose such an unlawful sentence is helpful in ascertaining the true intent that actuated him in the whole transaction.

The last evidence that Judge Swayne was actuated by an evil intent to punish a personal affront by a clear violation of the law and an arbitrary abuse of judicial power is found in his vituperation and abuse of the respondents at the time he sen-

tenced them. The facts, as stated by them, are not denied by the Judge or his amicus curia, who both testified in the case. His manner was "offensive and insulting." He denounced these lawyers as "ignorant." He vituperated them as a "stench in the nostrils of the people." From these circumstances the fact is found that Judge Swayne had something in his heart besides an honest intent to vindicate the dignity of his court, and that that something was an intent to punish these unfortunate persons who had fallen into his power, not for offending against the dignity and good order of the court, but for what he conceived to be a personal affront.

Doubtless an argument may and will be made that Judge Swayne believed that the lawyers, Paquet, Belden, and Davis, brought an unfounded action against him for the purpose of influencing his action in the Florida McGuire case, and also that their conduct in bringing the suit after dark Saturday night and procuring the service of process upon him that night was intended as a personal affront, and that he also believed they caused to be published in the papers next morning notice of the suit (which was not proved), and therefore he was properly and righteously indignant and should be leniently dealt with, because what he did was done under provocation and in the heat of his displeasure.

The answer is that if he had observed the common rules of administering justice and had decided the case as the law requires he would never have thought for a moment of punishing a constructive contempt after the accused had purged themselves under oath.

Certainly no hurt feelings, no offended dignity, even no legitimate desire to punish a punishable contempt could justify or excuse the grossly unlawful and excessive punishment imposed in this case.

If the independence of the judiciary and their power to protect their own dignity and honor are indispensable to a free government, the right of the great body of earnest, learned, and faithful men who practice at the bar to be exempt from cruel, unusual, and unlawful punishments at the hands of judges for imaginary or real offenses is no less sacred.

For such a high misdemeanor in office no judge should be allowed to escape just punishment on the plea that he made a mistake of law. If allowed, there is no arbitrary abuse of discretion, no disobedience of law, no oppression or outrage upon the rights of liberty or property that could not go unwhipt of justice.

In support of the fourth charge, viz, the arbitrary and unlawful imprisonment of W. C. O'Neal, the facts in the case are as follows:

One Greenhut had been appointed trustee in bankruptcy of one Scarritt Moreno. Greenhut brought an action in the county court of Escambia County for the purpose of having certain land, the title to which was in the bankrupt's wife, brought into the bankrupt's estate, and also to relieve the said land of a certain mortgage of $13,000, which appeared to be a lien upon it, which had been given the National Bank of Pensacola and by them assigned to the bank. Greenhut was a director and O'Neal was president. Greenhut was also indorser on Moreno's paper in the bank for $1,500.

On the 20th day of October O'Neal was passing along the street in front of Greenhut's store. Greenhut was in conversation with another man. O'Neal spoke to him and said when he was at leisure he wished to speak with him. Greenhut said he could speak at once and invited him to enter his store. O'Neal reproved Greenhut for including the bank in the suit which he had brought. He stated to Greenhut that he, Greenhut, was aware of the fact that the $13,000 mortgage was genuine; that the bank had advanced the money and had parted with it for a valuable consideration; also that he, Greenhut, had often promised to pay the indorsed paper upon which he was liable to the bank, but had not done so. But words passed, when O'Neal passed out of the store, followed by Greenhut to the sidewalk, where an affray occurred in which Greenhut was stabbed by O'Neal with a pocketknife and seriously injured. O'Neal swore that Greenhut assaulted him and that, being a much weaker man physically, he defended himself with a small pocketknife.

A proceeding for contempt of the district court of the United States was commenced, in which B. C. Tunison appeared for the receiver, Greenhut.

At the time of the affray the district court was not in session. The difficulty took place at a considerable distance from the court-house on a public street. Judge Swayne was not at the time in the district.

The charge for contempt proceeded upon the theory that, the assault having been made upon a receiver in bankruptcy appointed by the district court for some matter growing out of his actions as receiver, a contempt of the district court had been committed. O'Neal had been arrested in the State court for his offense against the law. When the rule to show cause why he should not be committed for contempt was served, he employed counsel and made answer, denying any intent to commit a contempt of court.

The testimony of Greenhut and O'Neal was taken; none of the bystanders were sworn, nor was any other person sworn. O'Neal denied the contempt and explained that the quarrel grew out of the relations of Greenhut to the bank and what he claimed to be his dishonesty in including the bank in the suit. Greenhut contended that he was an officer of the court, and that he had been assaulted on account of his official acts, and, as a consequence, had been laid up for a period of time and rendered unable to perform his duty as receiver.

Judge Swayne sentenced O'Neal to be imprisoned in the county jail for a period of sixty days.

The act of Congress defining the power of the United States courts to punish contempt is as follows:

> The said courts shall have the power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempt of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

Manifestly the case of O'Neal was not within the act. The offense was not committed—

(*a*) In the presence of the court;

(*b*) Or so near thereto as to obstruct the administration of justice.

(*c*) It was not a misbehavior of an officer of the court in an official transaction.

(*d*) Was not resistance of any lawful act, order, rule, decree, or command of said court by any person.

This act was passed after an unsuccessful attempt to impeach Judge Peck for striking the name of an attorney from the roll for an alleged contempt of court committed by him in publishing a criticism of a published opinion of the judge in a case in which the attorney had appeared and which had been appealed.

The impeachment proceedings provoked long discussion as to the common-law power of the United States courts to punish contempt not committed in the presence of the court. To set doubts at rest and to define the powers of such courts this salutary act was passed. It bounds and limits the rights and powers of these courts, and its transgression ought not to be regarded lightly in cases involving the liberty of citizens of the Republic.

The action of Judge Swayne was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions, an excuse which he will not be likely to set up.

If an unlawful act is committed by judge or layman the law conclusively presumes an evil intent.

The theory upon which O'Neal was held guilty of contempt of court was:

(*a*) That Greenhut was an officer of the court.

(*b*) That he was assaulted for performing an official act in the line of duty.

(*c*) That he was disabled by the assault from performing his duties as receiver for about two weeks.

Suppose all the allegations to have been proved, before the assailant of Greenhut could be held guilty of contempt of court some proof should have been produced to show that O'Neal's purpose in committing the assault was to punish Greenhut for his official action and to disable him from performing his duty as receiver.

If his purpose was to rebuke Greenhut for his bad faith as a bank director, or if the quarrel between the men which resulted in the fight had its origin in a dispute about Greenhut's knowledge that the mortgage was genuine or that Greenhut was endeavoring to escape liability upon his indorsement to the bank of Moreno's paper, and if he had no thought of the court or intention to interfere with its operations, then certainly he was not guilty of a contempt. O'Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false. That was the occasion of O'Neal's remonstrance which led to the fight.

Whatever his purpose, the assault was not committed in resistance of any order, decree, rule, or command of the court. No one pretends that it was. The only claim is that the court has power and should protect a receiver in bankruptcy by punishing anyone who quarrels with him on account of anything he does in the line of his duty as receiver. If it has such power, it is not conferred by the statute. And as the district court has no

other authority to punish for contempt except that which is conferred by the statute, the conclusion is that in this case a citizen of the United States was unlawfully condemned to prison.

The answer of O'Neal purged the contempt, and it was error to punish him for it.

In support of the fifth and sixth charges, viz, the appointment by Judge Charles Swayne of B. C. Tunison to the office of United States commissioner, knowing him to be a man of bad reputation for truth and veracity, and that the said Tunison was reputed to exercise undue influence over Judge Swayne, the evidence established the fact that Judge Swayne reappointed B. C. Tunison commissioner of the United States after a trial in his court in which Tunison, as prosecutor, had been successfully impeached as a witness.

The evidence also establishes that the members of the bar at Pensacola, Fla., and elsewhere in the district, and suitors in the United States court are of opinion that Tunison has the power to exercise undue influence over Judge Swayne and that he does exercise such influence. To such an extent does this belief prevail that lawyers advise their clients to employ Tunison in their business as the best and only way to succeed in Judge Swayne's court.

No special acts of favoritism were shown. Neither was it proved that Tunison won an undue proportion of cases in the United States court. Nevertheless, the opinion stated is widely entertained. Tunison was shown to be very friendly with Judge Swayne—so friendly that he declined to pursue a habeas corpus case in which he had received a fee of $100, averring that he did it because Judge Swayne was his friend. The case referred to is that of Davis and Belden, committed by Judge Swayne for contempt of court. It may be remarked that Tunison neglected to return the retainer. The testimony satisfies the committee that Tunison is a dishonest man; also that he is indorser on a note of Judge Swayne that has been renewed for seven successive years in the Pensacola Bank.

The charges and specifications not covered by the foregoing findings were not proved by sufficient evidence to warrant action upon them.

Upon the whole case it is plain that Judge Swayne has forfeited the respect and confidence of the bar of his court and of the people of his district who do business there. He has so conducted himself as to earn the reputation of being susceptible to the malign influence of a man of notoriously bad character. He has shown himself to be harsh, tyrannical, and oppressive, unmindful of the common rule of a just and upright judge. He has continuously and persistently violated the plain words of a statute of the United States, and subjected himself to punishment for the commission of a high misdemeanor. He has fined and imprisoned members of his bar for a constructive contempt without the authority of law and without a decent show of reason, either through inexcusable ignorance, a malicious intent to injure, or a wanton disposition to exercise arbitrary power. He has condemned to a term of imprisonment in the county jail a reputable citizen of the State of Florida over whom he had no jurisdiction, who was guilty of no thought of a contempt of his court, for no offense against him or in the presence of the court, or "in obstruction of any order, rule, command, or decree," and after the accused had purged himself on oath.

For all those reasons Charles Swayne has been guilty of misbehavior in his office of judge and grossly violated the condition upon which he holds this honorable appointment. The honor of the judiciary, the orderly and decent administration of public justice, and the welfare of the people of the United States demand his impeachment and removal from the high place which his conduct has degraded.

It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges, the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist.

In support of the seventh charge—viz, that Judge Swayne arbitrarily and unlawfully refused to hear witnesses produced by a litigant in his court upon the ground that he would not believe them if sworn, and that he continued his case arbitrarily and unlawfully without day—the testimony showed as follows:

The case of W. H. Hoskins is one of peculiar hardship. This man was advanced in years and was unable to read or write. He was engaged in the business of producing turpentine, growing cotton, and general merchandising. He had accumulated property worth about $40,000, and owed debts amounting to about $10,000. A part of this indebtedness was of the firm of Hoskins & Hilton, of which he had been a partner. He had sold out his interest in the firm under an agreement that the purchaser would pay the indebtedness of the firm. This agreement was not kept, and some suits were brought against Hoskins, in which he was defended by a lawyer named J. N. Calhoun on the ground that the suit should have been brought against the person who had agreed to pay the debts. Of course the defense failed and Hoskins paid.

This was the beginning of trouble. The evidence is full and convincing that a lawyer named Boone conspired with Calhoun to put Hoskins in bankruptcy in order to plunder his estate. Some claims came into their hands for collection. Hoskins paid promptly on demand, and notified Boone, through his counsel, Judge Liddon, that he was prepared to pay everything he owed. Boone secured claims to the amount of $500, and without authority of his clients commenced proceedings involving bankruptcy against Hoskins, swearing to the petition himself. Certified checks were sent to all the creditors; some took them and withdrew; others were deterred by Boone's action. He told them that they would subject themselves to large costs and fees if they took their money.

Judge Swayne, against objection, gave time to Boone to obtain a proper verification of the complaint; then to get more creditors to sign the petition in place of those withdrawn. This he did at least twice. Hoskins filed a denial of insolvency and demanded a trial. Meantime, one Tunison, United States commissioner and next friend of Swayne, was taken into the conspiracy. Hoskins was adjudged bankrupt, a receiver was appointed, all his property seized, his store closed, his men intimidated, and ruin stared him in the face, as his business of producing turpentine needed daily care. He went to Boone with the money to pay all his debts. Boone told him he would be in contempt of court if he attempted to pay money to the creditors, and demanded $1,000 for himself and $1,000 for Tunison, and all costs. Hoskins refused.

Calhoun, as receiver, sent a man named Richardson to seize Hoskins's books of account at one of his branch stores. He found a book belonging to the firm of Hoskins & Bro., which had been left there for a bookeeper to make up. On his return he met C. H. Hoskins, a son of W. H. Hoskins, one of the firm of Hoskins & Bro., who demanded the book, stating that it did not belong to his father and contained nothing pertaining to his business. Richardson refused to give it up; a fight ensued, and young Hoskins took the book by force. The next step of the conspirators was to commence proceedings for contempt of court against young Hoskins. The motive is fully explained by a letter from Boone to Tunison:

[Robt. J. Boone, attorney and counselor.]

MARIANNA, FLA., *March 13, 1902.*

GENTLEMEN: In re W. H. Hoskins, involuntary bankruptcy.

I beg to inclose you herewith another claim to be added to the amended petition, to the amount of $200, which you will please have the court to include. I have just received telegram from Calhoun stating that the petition had not yet arrived. I have wired for same three times in the last two days and trust same will reach you to-night. This additional claim of $200 is a stunner to them I presume.

I trust you all will be able to handle the matter all right. I feel sure that we have them coming our way now, and if we can have C. D. Hoskins attached for contempt it will break the old man down sure.

Please advise me in the premises as early as possible and oblige,

Very truly, yours,

ROBT. J. BOONE.

Messrs. TUNISON & LOFTIN, *Pensacola, Fla.*

(Inclosures.)

W. H. Hoskins, finding that he was not allowed to pay everything, averred his solvency, and demanded a trial on that question. Judge Swayne refused to proceed with the case until the book taken by young Hoskins was produced.

The following motion was made by Mr. Tunison on behalf of petitioning creditors:

On account of the forcible taking away of certain books belonging to the estate of the alleged bankrupt by the son of the bankrupt from the possession of the receiver herein, as fully set forth in the petition and affidavit of J. M. Calhoun, receiver, heretofore filed, which books are essential to the ascertainment of the true condition of the estate, and the continued withholding of the books from the custody of the receiver, petitioning creditors ask for a postponement for such a time as will enable them to secure the information believed to be contained in those books.

By Mr. Eagan, representing intervening creditors; also by Judge B. S. Liddon and W. H. Price, representing W. H. Hoskins, respondent.

Now, your honor, we desire to oppose the action for a postponement and continuance on the grounds stated, for the reason that the said C. H. Hoskins alleged to have the books in question is not a party to the record of these proceedings; for the further reason that those books are not under the control of the intervening creditors or respondent, W. H. Hoskins; on the further ground that it is not true that the books contain any matter, items, or accounts, or any business transac-

tions of any kind or in connection with the business of W. H. Hoskins, who is the respondent, or of any firm with which he was ever connected, or of which he was a member, and we are ready now to submit to your honor proof of these facts by W. H. Hoskins, W. H. Price, who has recently examined these books, and also by T. A. Jennings, vice-president of the J. P. Williams Company, Savannah, Ga., that he has recently examined these books—that is, since the beginning of these proceedings—and that the same did not contain any accounts or business transactions of any kind of the business of W. H. Hoskins or in connection with these proceedings.

We also proffer to prove the same things by W. H. Hoskins, who also knows the books and what they contain.

We offer to prove that the books in question are the books of a firm called Hoskins Brothers, composed of J. P. and C. D. Hoskins, and have reference solely to the matters of said firm, and that W. H. Hoskins was never in any manner a partner or in any way connected with said firm; and further, that the books are not absent by the consent or advice of counsel or any of the intervening creditors herein, or of the said W. H. Hoskins, and that none of them know the whereabouts of the said books, or have seen them since the absconding of the said C. D. Hoskins.

BY THE COURT: The court, in answer to the motion, states that it believes from the showing and circumstances, the only showing before the court was an affidavit by Calhoun, who had never seen the book, that he believed it contained something important; that the bankrupt in this case is in a measure responsible for the absence of the books in question, and under these circumstances can not permit the bankrupt nor his friends to testify to their contents in their absence until some better showing is made or tendered as to their whereabouts.

W. H. Hoskins was present in court with his counsel and offered testimony of several disinterested persons who knew the facts that the books to which Judge Swayne alluded had been taken by one C. D. Hoskins, to whom, as one of the firm of Hoskins & Bros., they belonged; that W. H. Hoskins, the alleged bankrupt, had no interest in said firm; that the said books were not in the possession of W. H. Hoskins or under his control; that they contained no written items or accounts of any business transacted of any kind connected with the business of W. H. Hoskins, or of any firm of which he was ever a member, and that he had nothing whatever to do with the taking or any knowledge of their whereabouts.

Notwithstanding, the said Charles Swayne, in the absence of any evidence to the contrary save an affidavit of one Calhoun, who had never seen the books, but swore he believed they contained something of importance in the case, refused to proceed with the case, stating that he "would not believe the evidence offered if sworn to by his brother," and continued the hearing of the same without day, to the great injury of the said W. H. Hoskins.

Young Hoskins had been hiding out to escape arrest, of which he was so fearful that he said he would rather die than go to jail. His uncle, one Rhodus, went to Tunison, who had instituted the contempt proceeding, and paid him $50 and agreed to give $50 more if Tunison would intercede with Judge Swayne to let young Hoskins off with a fine without imprisonment. Tunison took the money, but Swayne insisted upon going on with this case against young Hoskins, who finally put an end to Swayne's persecution by taking his own life.

W. H. Hoskins, despairing of getting justice or a hearing, paid the creditors in full and such costs as Calhoun demanded.

The whole disgraceful perversion of law and justice was made possible by the complaisancy, stupidity, or worse, of Judge Swayne, who lent himself to a conspiracy to ruin an honest man by aiding the conspirators in every way in his power. He had no right to refuse a hearing to Hoskins on the ground that a book taken out of the custody of the receiver's clerk by any other person must first be produced. It was a denial of justice. It was an arbitrary and oppressive abuse of power. There was no sufficient testimony before the judge that the book had any relevancy to the case; nothing but the affidavit of the receiver, who had never seen the book, that he believed it contained something necessary to the determining of the question of Hoskins's solvency. In the face of an offer to prove the fact by disinterested and competent testimony, among others that of a person who had examined it, the judge refused to believe anything, saying that he would not believe his own brother if he would swear to it. In his argument before the subcommittee, Judge Swayne was asked why he refused to hear Hoskins's witnesses to prove that the book was that of Hoskins Brothers, and contained nothing whatever pertaining to the business of W. H. Hoskins. His answer was, Because he would not believe the witnesses.

Being interrogated by the subcommittee as to why he refused to hear Hoskins's witnesses, Judge Swayne testified as follows:

Mr. PALMER. Did you state it was unnecessary for Hoskins to submit any proof about these books? Does not the record show that?

Judge SWAYNE. There was a witness upon the stand who testified as to Mr. Hoskins's ability to pay his debts.

Mr. PALMER. But what had that to do with the proof submitted by the witness Jennings?

Judge SWAYNE. Well, that requires a further answer. And there was, I believe, some evidence by a man they called Price, on this subject, but that man's name was not Price, although he went by that name. He was designated as Price, but his name was really something else, which I do not now recall.

Mr. PALMER. Then you mean to say in substance that you did not have any confidence in that witness?

Judge SWAYNE. I certainly did not.

Mr. PALMER. Well, do you think a judge has the right to take that view of a witness in the administration of justice?

Judge SWAYNE. Yes, sir.

Mr. PALMER. At the time you made that ruling was there any proof that Hoskins had ordered his son to take the books back?

Judge SWAYNE. Well, I wanted to have the books in court when the trial came on or show that they could not be had.

Mr. PALMER. That is just the point; and you refused to hear anything on the point, and would not hear the witness or hear the testimony?

Judge SWAYNE. I did not see how I could.

Mr. PALMER. That is correct, is it?

Judge SWAYNE. Yes, sir.

This action of the judge presents at least an entirely new feature in the administration of justice. A suitor is denied the right to offer evidence in support of his case because the judge has made up his mind in advance that the witnesses offered are not worthy of belief.

In this case Mr. Price, one of the witnesses, was a practicing attorney of the courts of Florida, and, presumptively, a perfectly worthy man. Mr. Jennings was one of the largest producers of turpentine in the State, a substantial business man, personally known to at least one member of the committee to be of irreproachable character and standing. W. H. Hoskins was at least competent to testify that the book was not his and was not used in his business.

To refuse to hear these witnesses was an unwarranted and unheard-of proceeding. To continue the case of Hoskins without day, under the circumstances, was an unparalleled abuse of discretion on the part of the judge which amounted to a denial of justice.

In support of the eighth charge, the testimony taken establishes the following facts, which are not disputed by the respondent.

1. That at a time when the Jacksonville, Tampa and Key West Railroad was in the hands of Mr. Durkee, a receiver appointed by Hon. Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, the receiver provisioned a private car which belonged to the railroad company, placed a conductor and cook upon it, and sent it to Guyencourt, Del., for the purpose of bringing Judge Swayne to Jacksonville, Fla. Judge Swayne, his wife, his wife's sister, and her husband were transported on the private car to Jacksonville, Fla., and subsisted at the expense of said railroad company.

Judge Swayne acknowledged the facts, as above stated, but defended his action upon the ground that the property of the railroad company being in the hands of the court, he, the judge of the court, had a right to use it without making compensation to the railroad company.

When questioned on the subject he answered as follows:

By Mr. PALMER:

Q. You said this car was one of the cars in possession of the court, because the road was in the hands of a receiver?—A. Yes.

Q. You said that it was the privilege of the court to use that car, because the road was in the hands of a receiver?—A. Yes; that was the reason why it was used.

Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?—A. The receiver, in talking that over with me, stated that it was generally understood that a car was in better condition running than if it were standing idle on a siding.

Mr. PALMER. Will the stenographer read that question, please?

The STENOGRAPHER (reading):

"Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?"

Mr. PALMER. That is the question.

The WITNESS. Yes, sir. I had ten railroads in my hands as judge in six years.

The testimony further establishes the fact that Judge Charles Swayne made use of the same car for the purpose of taking a trip to the Pacific coast with his family and friends. The proof was that the car had some liquid supplies on board when taken. Judge Swayne expressed the opinion that he left as much when it was returned.

In the case of the trip from Delaware, and also the trip to California, transportation was secured by the receiver over other railroads, and in return therefor the private cars from the other roads were transported over the Jacksonville, Tampa and Key West without charge. A porter or cook employed by the railroad company went with the car to the Pacific coast at the cost of the company.

In support of the ninth, tenth, and eleventh charges the testimony further establishes the fact that for every day that Judge Swayne has held court out of his district since he has been a judge he has received from the Treasury of the United States the sum of $10, which has been paid upon his certificate that he had expended that sum for reasonable expenses. Judge

Swayne's account, as proved by an official of the Treasury Department, is as follows:

Name of marshal paying voucher.	Account No.	Place of holding court.	Period covered by voucher.	Amount paid.
Guillotte	9349	Baton Rouge, La	Apr. 19 to May 4, 1895	$140
Do	9349	New Orleans, La	May 13 to May 31, 1895	170
Love	18650	Waco, Tex	30 days from Nov. 18, 1895	300
Do	18650	Dallas, Tex	40 days from Jan. 21, 1896	400
Do	18650	Graham, Tex	2 days from Mar. 9, 1896	20
Do	26252	Waco, Tex	18 days from Apr. 27, 1896	180
Do	26252	Dallas, Tex	36 days from May 18, 1896	360
Do	29482	Waco, Tex	28 days from Nov. 18, 1896	280
Do	35513	Dallas, Tex	42 days from Jan. 11, 1897	420
Do	35513	Fort Worth, Tex	12 days from Mar. 1, 1897	120
Do	36910	Waco, Tex	23 days from Apr. 20, 1897	230
Do	36910	Dallas, Tex	39 days from May 17, 1897	390
Guillotte	61252	New Orleans, La	19 days from Jan. 1, 1898	190
Do	44704	do	40 days from Jan. 20, 1898	400
Do	44704	do	11 days from Mar. 1, 1898	110
Do	44704	do	10 days from Mar. 11, 1898	100
Do	44704	do	10 days from Mar. 22, 1898	100
Do	61252	do	10 days from Apr. 1, 1898	100
Do	61252	do	15 days from Apr. 16, 1898	150
Do	61252	do	10 days from May 1, 1898	100
Do	61252	do	19 days from May 11, 1898	190
Fontelieu	54281	do	19 days from Nov. 21, 1898	190
Do	54397	do	10 days from Jan. 30, 1899	100
Do	54397	do	10 days from Feb. 8, 1899	100
Do	54397	do	10 days from Feb. 18, 1899	100
Do	54397	do	10 days from Feb. 28, 1899	100
Do	54397	do	10 days from Mar. 10, 1899	100
Cooper	59388	Birmingham, Ala	28 days from Apr. 4, 1899	280
Do	59388	do	19 days from May 22, 1899	190
Do	60217	Huntsville, Ala	29 days from Oct. 9, 1899	290
Fontelieu	70206	New Orleans, La	10 days from May 24, 1900	100
Do	70206	do	10 days from June 2, 1900	100
Do	70206	do	5 days from June 12, 1900	50
Cooper	69592	Birmingham, Ala	29 days from Sept. 3, 1900	290
Do	73109	do	8 days from Sept. 3, 1900	80
Grant	71960	Tyler, Tex	31 days from Dec. 3, 1900	310
Cooper	78334	Birmingham, Ala	21 days from Sept. 2, 1901	210
Houston	93964	Tyler, Tex	41 days from Jan. 12, 1903	410

Witnesses with whom Judge Swayne boarded at Fort Worth, Dallas, Tyler, and Waco, in hotels and boarding houses, during the times when he held court in those places testified in part as follows:

Samuel McIlhenny, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Give your name in full.—A. S. C. McIlhenny.

Mr. HIGGINS. What is your first name?

The WITNESS. Samuel.

By Judge LIDDON:

Q. Your residence?—A. Dallas, Tex.

Q. Your *business or occupation*?—A. I am manager of the Oriental Hotel.

Q. How long have you been such manager?—A. Eight years.

Q. Were you such manager in January, 1896?—A. No; I was in the office in 1896. I was connected with the house.

Q. In January, 1896?—A. Yes, sir.

Q. Did you know Judge Charles Swayne?—A. Yes, sir.

Q. How long have you known him?—A. Well, I did not know the Judge until I went to the hotel. I was in a former hotel there. He was there when I first went to the hotel.

Q. He was at the Oriental when you first went there?—A. Yes, sir.

Q. You say that was when?—A. In 1896.

Q. Do you know the date in 1896?—A. The first part of the year; I don't know exactly the date—either January or February. In January, I think it was, some time.

Q. In January?—A. Yes, sir.

Q. Do you know whether Judge Charles Swayne was at Hotel Oriental in January, 1896?—A. He was there when I went there. I went there in the latter part or middle part of January.

Q. Do you know when he left?—A. No; I do not.

Q. Can you refresh your memory from that memorandum—did you make that [submitting paper]?—A. The cashier or bookkeeper made that——

Judge LIDDON. I submit this as an exhibit:

EXHIBIT F.

DALLAS, TEX., *March 5, 1896.*

Mr. Chas. Swayne to the Oriental, Dr.

[S. E. McIlhenny, manager.]

March 1 to 3/6, 6 days	$16.00
For board month of Feb. 9 to 2/29, 20½ days	68.35
Feb. 1 to 2/9, 8½ days	19.80
Express, 2/3, .60	.60
Laundry, 2/12, 1.30, 1.10; 3/5, .75	3.15
Wine, etc., 2/26, .40	.40
Telegrams, 2/24, 1.15	1.15
Drugs, 2/6, 1.35	1.35
	110.80
3/6, cr. by rebate on rate	$13.80
3/6, cr. by cash	97.00
	110.80

The WITNESS (continuing). But I looked over it.

Q. Is that his handwriting?—A. Yes, sir.

Q. He is in charge of the books there?—A. Yes, sir.

By Mr. PALMER:

Q. Did you examine it to ascertain if it was correct or not?—A. Yes; I looked over it when he made it off the board book.

By Judge LIDDON:

Q. Do you know how much he paid for his board there in January, 1896?—A. I do not, only from this memorandum.

Q. Can you tell from that memorandum?—A. Yes, sir.

EXHIBIT G.

DALLAS, TEX., *January 31, 1896.*

Mr. Chas. Swayne to the Oriental, Dr.

[S. E. McIlhenny, manager.]

For board month of Jan. 20 to Jan. 31, 1896	$26.80
Laundry, 20/95	.95
Wine, etc., 20/50	.50
	28.25
Cr. Feb. 5, 1896, by chk	28.25

Q. How much was it?—A. According to that, in January he paid $28.25. The books correspond with this statement exactly; that is, in January.

Q. He paid $28.25?—A. Yes.

Q. Now, were you connected with the same hotel—you said you were—in March, 1896?—A. Yes, sir.

Q. Do you know whether Judge Swayne stopped at that hotel, then, in February or March, 1896?—A. Yes, sir.

Q. Do you know how much he paid?—A. He paid cash $97.

Mrs. Annie E. Russell, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you live?—A. Tyler, Tex.

Q. How long have you been there?—A. About twenty-two years.

Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.

Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.

Q. That was at Tyler?—A. Yes, sir.

Q. Did Judge Swayne ever board with you there?—A. Yes, sir.

Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during that trial of the bank there.

Q. In the United States court room?—A. Yes, sir.

Q. Do you know in what year it was?—A. It was last year.

Q. 1903?—A. Yes, sir.

Q. Do you know what part of the year—the early part or the latter part?—A. It was January, as well as I can recollect.

Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.

Q. You do not know how long; could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.

Q. Do you know what rate of board he paid you?—A. Yes, sir; $1.25 a day.

Q. Did that include lodging?—A. Yes, sir.

Mr. CLAYTON. That included table board and lodging?

A. Yes, sir; everything.

By Judge LIDDON:

Q. $1.25 a day?—A. Yes, sir.

Q. In the early part of the year 1903 he was there from four to six weeks?—A. He was there during the whole term of court.

Susan Lyle Downs, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you reside?—A. Waco, Tex.

Q. You are engaged in the business of keeping a boarding house or hotel there?—A. A private boarding house.

Q. How long have you been so engaged, madam?—A. Seventeen years.

Q. Do you know Judge Charles Swayne?—A. Yes, sir.

Q. Has he ever been a guest of your house?—A. I think three terms of court. Of course, I am not sure, but that is my recollection.

Q. Three terms?—A. Three terms of court.

Q. Can you fix the date?—A. No, sir; I can not.

Q. Can you say whether it was since 1895?

Mr. HIGGINS. Speak of your own knowledge and without suggestion.

A. I really could not answer as to the year he was there. I could not; I do not.

By Judge LIDDON:

Q. You can not say how many years, or approximate how many years ago?—A. If you can tell when Judge Rector was disabled, I could tell you, but otherwise I can not.

Q. It was while he was holding United States court?—A. Yes, sir.

Q. And he stopped with you three terms?—A. Yes, sir.

Q. Did you ever know him to hold United States court there at any other time except the three times he stopped with you?—A. No; I don't remember it.

Q. Do you know how long he stopped with you at the time he was there?—A. No, sir; I do not. I know he was at the term of court, but I never made any memorandum of it.

Q. During a term of court three times?—A. I think so.

By Mr. CLAYTON:

Q. Do you mean the term while the court was lasting, the whole session of the court?—A. Yes.

Q. Not just for a day and then a day?—A. Oh, no.

By Judge LIDDON:

Q. You can not approximate how long he would stay at a time?

Mr. PALMER. About?

A. I really do not know.

By Mr. CLAYTON:

Q. Was he a transient, or did he stay a day or half a day?—A. He stayed during the whole term. I suppose probably from three to five weeks possibly.

Judge LIDDON. At a time?

A. Yes.

Mr. CLAYTON. That is to the best of your recollection, from three to five weeks?

By Judge LIDDON:

Q. Do you know what rates you charged him for board?—A. At the rate of $40 for himself and $65 for himself and wife.

By Mr. CLAYTON:

Q. What is that, per month?—A. Per month. I do not want to do any injustice here. That is to the best of my knowledge.

By Judge LIDDON:

Q. And $65 per month when he had his wife with him?—A. Yes, sir.
Q. Are those your best rates?—A. Yes, sir.
Q. All you ever charged?—A. Yes, sir.
Q. You said he was there sometimes without his wife?—A. I think two terms without Mrs. Swayne; one term with her.
Q. When he was there without her it was $40 a month, or $65 for the two?—A. Yes, sir.
Q. That included room as well as board?—A. Room and board.
Q. Was it winter or summer that he was there?—A. I am not sure whether it was two fall terms or two spring terms of court. There was one term and then two of the other.

The act of Congress of 1871, Revised Statutes, section 596, provides, when a district judge is assigned to hold court outside his district, as follows:

And it shall be the duty of the district judge so designated and appointed to hold the district or circuit court aforesaid without any other compensation than his regular salary as established by law.

The act of 1881, page 454, provides as follows:

And so much of section 596, Revised Statutes, as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed.

And the act of 1896, page 451, as follows:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts not to exceed $10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

It was admitted that Judge Swayne made and signed the certificates required by law before receiving each payment of $10 per day, viz, that his reasonable expenses for travel and attendance amounted to a sum which was equal to $10 for each day that he held court out of his district, whereas the testimony showed that his outlay for board and lodging at Waco, Tyler, and Dallas, Tex., ranged from $1.25 to $3 per diem, and that his traveling expenses from Pensacola could not have exceeded $50.

The preliminary question to be submitted to the House is, Ought Judge Swayne to be impeached upon any or all the charges? Some gentlemen may be of opinion that some of the charges are insufficient, or that they are insufficiently proved, and that others are sufficient. If impeachment is ordered, the next step will be the selection of managers by the House, and the preparation by them of formal charges upon which the House will have an opportunity to pass.

In my opinion all the charges made are properly the subject of impeachment, and all are sustained by sufficient testimony.

It is true that some of these charges would not sustain an indictment, but it is also true that all the precedents establish the law that a judge may be impeached for misbehavior in office which is not indictable. I will repeat what has already been said on this subject.

Judge Pickering, of New Hampshire, a district judge of the United States, was impeached by the House, tried and found guilty by the Senate, and removed from office upon charges which did not import criminality and for which no indictment would have laid against him.

The charges were that he released the bark *Eliza* to her owners after she had been seized for a violation of the revenue laws, without requiring a bond, and that he refused an appeal to the United States. Second, that he appeared upon the bench in an intoxicated condition, and used profane language.

The claim was made, and strongly urged, that as to the first charge it was at most a mistake of law, not indictable, for which no judge can ever be questioned; and as to the second, that, however reprehensible, it also was not a criminal act. The House and Senate swept away this plea and proceeded to try and condemn.

In the case of Judge Chase the main charge was that he refused counsel the privilege of arguing to the court upon a question of law which had been fully argued and decided at a previous trial of the same cause, viz, whether forcible resistance to officers of the United States engaged in collecting revenue under an act of Congress amounted to levying war against the United States, and was, therefore, punishable as treason.

The defense was made that at the most Judge Chase was guilty of nothing more than an innocent mistake of law, not indictable or particularly reprehensible. It was not claimed that he acted maliciously or vindictively or from any bad motive. In point of fact, the ruling was withdrawn and counsel instructed to proceed with any argument upon the point they had to offer before the case was tried, but they refused, withdrew from the case, and advised their client to decline to have counsel assigned by the court. He was tried, convicted of high treason, and sentenced to death, and pardoned by the President.

The House impeached Judge Chase, and a majority of the Senate voted that he was guilty. Certainly Judge Chase could not have been indicted for his act.

Judge Peck was impeached and tried by the Senate for imprisoning for twenty-four hours and suspending from practice one Luke E. Lawless, an attorney at law, for writing a criticism of a published opinion of the court on a case which had been appealed to the Supreme Court.

The defense was taken that the act of Judge Peck was not of a criminal nature, was not indictable, and therefore not the subject of impeachment. The House did not take that view. Twenty-one Senators voted guilty; 22 not guilty.

Many more precedents of a similar nature might be cited, but these are sufficient to settle the question that a judge may be impeached for misbehavior which is not indictable. Upon this point the remarks of Hon. James Buchanan in the case of Judge Peck may be profitable.

What is an impeachable offense? This is a preliminary question which demands attention. It must be decided before the court can rightly understand what it is they have to try. The Constitution of the United States declares the tenure of the judicial office to be "during good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the Constitution or some known law of the land. This, I think, was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle from which his counsel in the first instance strenuously contended, that in order to render an offense impeachable it must be indictable. But this violation of law may consist in the abuse as well as the usurpation of authority.

The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars and commits him to prison for a year. Now, although the judge may possess the power to fine and imprison for this offense at his discretion, would not this punishment be such an abuse of judicial discretion and afford such evidence of the tyrannical and arbitrary exercise of power as would justify the House of Representatives in voting an impeachment?

But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us? A member of the bar is brought before a court of the United States guilty, if you please, of having published a libel on the judge—a libel, however, perfectly decorous in its terms, and imputing no criminal intention, and so difficult of construction, that though the counsel of the respondent have labored for hours to prove it to be a libel, still that question remains doubtful. If, in this case, the judge has degraded the author by imprisonment, and deprived him of the means of earning bread for himself and his family, by suspending him from the practice of his profession for eighteen months, would not this be a cruel and oppressive abuse of authority, even admitting the power to punish in such a case to be possessed by the judge?

A gross abuse of granted power and an usurpation of power not granted are offenses equally worthy of and liable to impeachment. If, therefore, the gentleman could establish on the firmest foundation that the power to punish libels as contempts may be legally exercised by all the courts of the United States, still he would not have proceeded far toward the acquittal of his client. (Trial of Judge Peck, pp. 427–428.)

I believe Judge Charles Swayne is impeachable, and that he ought to be impeached, for persistent and long-continued violation of a wholesome statute, which commanded him to live in his district—not constructively, but actually; for arbitrarily, cruelly, and unlawfully casting into prison and fining two reputable lawyers for a constructive contempt, of which he had no jurisdiction under the statute law and the decisions of the Supreme Court of the United States; for refusing to hear reputable witnesses offered in his court to prove a relevant fact, on the ground that he would not believe them if sworn; for unlawfully, arbitrarily, and vindictively imposing the disgraceful punishment of sixty days in the county jail upon a citizen for an alleged constructive contempt of court, of which he purged himself on oath, and of which the court had no jurisdiction; for accepting from a bankrupt corporation valuable favors, which lessened the assets to which creditors were entitled and which it was his duty to secure for them, and for defending his action upon the ground that he had a right to do it; for representing to disbursing officers of the Government that his reasonable expenses for travel and attendance was $10 per diem while holding court out of his district, and for receiving that amount, when in truth the expenses incurred and paid by him were less than $10 and probably not more than $4 or $5 per diem.

This judge has behaved himself well or ill. If well, he should be vindicated by the vote of this House and dismissed with the commendation, "Well done, good and faithful servant." If ill, he should be sent before the constitutional triers, where his apologies and excuses may or may not be heard. If the House is of opinion that the conduct of Charles Swayne has been commendable, let him go scot-free with your approval. In my humble judgment, it will be a sorry day for this Republic when such

behavior as his is commended by the representatives of the people.

In this country, more than any other, the courts are the cities of refuge for the weak, the defenseless, and the oppressed. Upon their integrity, ability, and purity depends the preservation of liberty, property, and life. They are the first objects of attack by those who would tear down all government. The anarchist finds the courts in his way and would destroy them by legislation, by detraction, or any other efficient means. If the courts maintain their influence and power to do good, they must have the confidence and respect of the people. That lost, their days of usefulness will be numbered and "Mene, mene, tekel, upharsin" may be written upon their walls.

No better method can be devised to destroy public confidence in the judiciary than for this House to commend and sanction such conduct as that of which Charles Swayne has been guilty. Advise the people that the judges have the right to use the power given them to punish contempts against the dignity and good order of their courts for the purpose of revenge upon their enemies or of gratifying their hatred and malice; let them know you approve the conduct of a judge who takes away the assets of a bankrupt corporation committed to his charge, and applies them to his own use and that of his friends for their personal gratification; tell the people that petty larceny, which would consign a man to prison who stole to keep from starving is commendable in a judge, and how long do you think they will respect and honor the courts, and, after public confidence is gone, how long will the courts remain sanctuaries or guardians of liberty or property?

For more than forty years I have stood before the courts of the State and nation, a practicing lawyer. I enjoy and greatly value the friendship of many judges, State and Federal. I have never had a personal difference with one. To me the office is so exalted and so sacred that its occupant commands and receives my respect without regard to his personality. I believe that the great majority of the judges of this country fill the requirements laid down to Moses in the wilderness of Sin more than four thousand years ago. They are "able men, swift to hear, slow to speak, and slow to wrath;" they "fear God, love the truth, and hate covetousness." The fact that no trial has been had for the impeachment of a judge for more than seventy years is high testimony to the efficiency, integrity, and honor of the courts. That they may be kept pure and free from all reproach is my prayer and hope.

For this reason I shall vote to impeach Charles Swayne.

Mr. CLAYTON. Mr. Speaker, doubtless no Member of the present House has ever before been called upon to make special study of the provisions of the Constitution relating to impeachments. Assuming this to be true, I beg, therefore, for the convenience of the House, to state in brief form and in proper order the provisions that are applicable in the present case.

The Constitution provides:

1. That the House of Representatives, and the House of Representatives only, may impeach a civil officer of the United States.
2. That the Senate, and the Senate only, may try such civil officer.
3. That such impeachment may be presented for treason, bribery, or other high crimes and misdemeanors.
4. That the judgment shall be in case of conviction removal from office or removal from office and disqualification.

These several propositions are founded upon the following provisions of the Constitution:

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment. (Art. I, sec. 2.)

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice *shall preside*: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law. (Art. I, sec. 3.)

In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected. (Article 2, section 1.)

The President shall be Commander in Chief of the Army and Navy of the United States and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Article 2, section 2.)

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 2, section 4.)

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may, by law, have directed. (Article 3, section 2.)

Inasmuch as there is no contention in this case that Judge Swayne has been guilty of either treason or bribery, the only two specific impeachable offenses named in the Constitution, it may be well to inquire

WHAT IS AN IMPEACHABLE OFFENSE?

The Constitution denounces all impeachable offenses under the terms of "treason, bribery, and other high crimes and misdemeanors." "Other high crimes and misdemeanors" are general terms, and for the import and meaning reference may be had to English jurisprudence and parliamentary law, to the provisions of the constitutions of the several States relating to impeachments in existence prior to and at the time of the adoption of the Federal Constitution, and from the interpretation put upon the words in the debates in and by the action of the United States Senate in impeachment cases which have there been tried.

An impeachable crime or high misdemeanor is one which in its nature and consequences is subversive of the Government or is highly prejudicial to the public interest, and the impeachable offense may consist of a violation of some provision of the Constitution, or of some law, or of an official oath, or of some duty by act of commission or omission, or by the abuse of discretionary powers from improper motives, or for an improper purpose without the violation of a positive law, such as a constitutional provision or statute. Such offenses are included in the words "high crimes and misdemeanors."

An impeachment may involve an inquiry whether a crime against any positive law has been committed, but it is not exclusively a trial for a crime. The objects of impeachment lie wholly beyond the penalties of the statute. The purpose of this proceeding is to discover whether a cause exists for removing a public officer from office. (Curtis's Hist. of Const., 260, 261; 5 Elliott, 507–529; Gelden's Judicature in Parliament, London, 1681, p. 6; 1 Story on Const., pars. 799, 800, 797; Rawle on Const., 200. See 6 Wheaton, 204; 1 Kent's Com., 289.)

It was observed at an early day by an eminent British authority that "when the words 'high crimes and misdemeanors' are used in prosecutions by impeachment the words 'high crimes' have no definite signification, but are used merely to give greater solemnity to the charge." (Note to 4 Blackstone, 5.)

And again it was said by another English author:

Magistrates and officers * * * may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not properly cognizable before the ordinary tribunals.

And he proceeds to say the remedy is by impeachment. Wooddeson's Lectures, 596.

The Constitution defines the crime of treason, but we must refer to the common and parliamentary law for the definition of bribery and other high crimes and misdemeanors.

Story, on the Constitution, says:

In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy.

There are many offenses purely political which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute books. And, indeed, political offenses are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable, if it were not almost absurd, to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings in 1788? Resort, then, must be had either to parliamentary practice and the common law in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law. * * * And however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute book of the Union as impeachable high crimes and misdemeanors.

Rawle, in his work on the Constitution, says:

The delegation of important trusts affecting the higher interests of society is always, from various causes, liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the baser appetite for illegitimate emolument, are sometimes productions of what are not inaptly termed political offenses (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

The involutions and varieties of vice are too many and too artful to be anticipated by positive laws. (Rawle on Constitution, 200.)

In general, those offenses which may be committed equally by a private person as by a public officer are not the subjects of impeachment. (Id., 204.)

We may perceive in this scheme one useful mode of removing from

office him who is unworthy to fill it, in cases where the people, and sometimes the President himself, would be unable to accomplish that object. (Id., 208.)

Chancellor Kent, in discussing the subject of impeachment, says:

The Constitution has rendered him [the President] directly amenable by law for maladministration. The inviolability of any officer of government is incompatible with the republican theory as well as with the principles of retributive justice.

If the President will use the authority of his station to violate the Constitution or the law of the land, the House of Representatives can arrest him in his career by resorting to the power of impeachment. (1 Kent's Commentaries, 289.)

Neither in Congress nor in any State has any statute been proposed to define impeachable crimes, so uniform has been the opinion that none was necessary, even in those States, few in number, where common-law crimes do not exist.

The assertion that "unless the crime is specifically named in the Constitution, impeachments, like indictments, can only be instituted for crimes committed against the statutory law" (vol. 6, Am. Law Reg. N. S., 269) is a view which has not been held at any time either in England or America.

It would certainly seem clear that impeachments are not necessarily limited to acts indictable by statute or common law, and that it would be impossible for human foresight to define in advance by statute the necessary subjects of impeachment. The Constitution contemplated no such impossibility. But the power has been limited as it is by the Constitution, and time has demonstrated that the limitations are sufficient.

The system of impeachment is to be governed by great general principles of right, and it is not probable that the Senate will ignore these.

The House has the sole power of impeachment and the Senate has the sole power of trial. The Senate is the sole judge of what constitutes "other high crimes and misdemeanors." There are many misdemeanors in violation of official oaths and duty shocking to the moral sense and inconsistent with a pure administration of public office, and yet these misdemeanors may not violate any positive law. (2 Chase's Trial, 289; Peck's Trial, 309.)

I beg to call attention briefly to some of the cases illustrative of impeachable offenses. Mr. Speaker, I shall ask the indulgence of the House while I do this, for the reason that I know the membership here present, owing to their multitudinous duties before the committees and the Departments, have not had time to read the books and authorities which they would desire to consult before voting here to-day, and in no spirit of vanity, but with apology, I shall offer this summary of these cases, to which I hope the Members will listen.

The first impeachment trial in the United States Senate was that of William Blount, a Senator of the United States from Tennessee. There it was held that the penalty in such case was expulsion from the Senate.

The next case was that of Judge Pickering. There he was charged with having made an order restoring a ship to the claimant without producing the certificate of payment of duties and tonnage tax as required by the act of Congress, and he was also charged with drunkenness and profanity on the bench. He was convicted on each charge and removed from office in March, 1804.

The next case was that of Samuel Chase, as associate justice of the Supreme Court of the United States. In this case he was not charged with an indictable offense, but was charged with misconduct in the trial of certain cases. It was there insisted that no judge could be impeached or removed from office for an act or offense for which he could not be indicted, either by statute or common law, but after argument this defense was practically abandoned.

In 1830 Judge Peck, of the United States district court of Missouri, was impeached for imprisoning and suspending from practice an attorney who had published an article criticising an opnion rendered by the judge in a case tried in his court. The proposition that a judge can not be impeached except for an indictable offense was in this case repudiated.

In the next case, that of Judge Humphreys, of the United States district court for the district of Tennessee, it was charged that he had advocated secession in a public speech in Nashville, and other charges of similar import were included in the articles of impeachment. The report of the Judiciary Committee recommending impeachment in Judge Humphreys's case did not charge any indictable offense, but on the trial no doubt was expressed as to the right to convict on each of the articles.

Judge Addison was impeached in Pennsylvania in 1802, and his defense was that he had committed no act indictable at common law; but the Senate almost unanimously convicted him, utterly repudiating that as a defense.

In Massachusetts the rule is well settled in conformity with what seems to be the recognized doctrine in the Senate of the United States.

Among the cases tried with great learning and ability there is that of James Prescott, who was convicted before the Senate.

Mr. Blake, for the defense, insisted that impeachment is "a process which can only be resorted to for the punishment of some great offense against a known, settled law of the land." The prosecution maintained "that any willful violation of law, or any willful and corrupt act of omission or commission in execution or under color of office * * * is such an act of misconduct and maladministration in office as will render him liable to punishment by impeachment."

High crimes and misdemeanors are punishable by impeachment when committed by civil officers of Government. These terms are used to express every offense inferior to felony, punishable by indictment; in its common acceptation it is applied to all of those crimes and offenses for which the law has not provided a particular name. Misdemeanors comprehend all indictable offienses which do not amount to felony, as perjury, battery, libels, conspiracies, and public nuisances. The Constitution resorts to the common and parliamentary law for its definition; and by the constitution of Massachusetts the senate is to hear and determine all impeachments made by the house of representatives against any officer of the Commonwealth for misconduct and maladministration in office. These words "high crimes and misdemeanors" have the same import as the words misconduct and maladministration, and the same as are employed by the constitution of Great Britain in its description of impeachable offenses, but they are subject to the limitations of the State law and constitution. (American and English Encyclopaedia of Law, vol. 9.)

In its characteristics impeachment is quasi criminal. The House of Representatives sits as the grand inquest of the people and performs the duty of inquiring into the complaints made against the judge, and if satisfied, as in the case of a grand jury, that any just ground exists for the removal of the judge from office, appoints its committee to prepare and present in formal order the charges of misconduct on the part of the judge to the Senate as the trial court—the judge and jury that shall pronounce upon the law and the facts, either sustaining the accusation or acquitting the respondent. The authority of the House is, therefore, inquisitorial and accusatory. Under our complex scheme of popular and representative government impeachment is the sole remedy that the people can invoke against a judge who is unjust, corrupt, tyrannical, oppressive, indecent, and unworthy. A Senator or Representative who takes part in the highest function of government, that of law making, may be judged according to his "daily walk and conversation," and be summarily expelled from the body of which he may be a member, or may in an election by the legislative representatives of the people or by the people themselves be retired to private life.

In the present case the people of Florida have invoked the extraordinary and sole remedy that exists for the trial and removal of a judge whom they contend is unworthy of his high office. It is for this House to say whether he shall be indicted here and required to undergo trial before the Senate as the high court of impeachment. I am sure that the members of this House would refuse to condemn in any wise a just and upright judge, and am also sure that after they have examined carefully the charges affecting the honesty and integrity of this judge they will do justice between him and the people.

Judge Swayne is here charged with having violated section 551 of the Revised Statutes, which is as follows:

A district judge shall be appointed for each district, except in cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

The plain purpose of this statute is to require a judge to reside in his district. If the statute had made this requirement and said no more, its violation would have been a high misdemeanor, but Congress went further than necessary and denounced such failure as a high misdemeanor, as if to give special emphasis to this plain statutory requirement. Let us inquire what is residence.

Reside: (1) To make an abode for a considerable time; be settled as in a home; live; dwell; as they reside in Chicago.

* * * * * * *

Residence: (2) The act of residing, or the state of being a resident.

* * * * * * *

Legal residence: A phrase variously used, as to denote (1) the place where one's home or family is, (2) fixed and permanent abode or domicile, (3) an abode of sufficient length to confer political rights or subject to personal taxation, or (4) permanency of abode more marked than mere lodging or boarding, but not fixed and final. (P. 1547, Funk & Wagnall's Standard Dictionary of the English Language, 1899.)

"Residence" and "domicile" are different things. They are

not convertible terms or synonyms. (21 American and English Encyclopedia of Law, 124.)

There is a broad distinction between a resident and a citizen. A man may be a resident of one State and a citizen of another State. (Dart *v.* Bates, 51 Illinois, 349.)

A residence is a fixed and permanent abode or dwelling place for the time being, as contradistinguished from the mere temporary locality of existence. (Anderson's Law Dictionary.)

To reside is to dwell permanently or for a length of time; to have one's home or settled abode; to abide continuously or for a lengthened period. (Encyclopedic Dictionary.)

A resident of a place is one whose place of abode is there and who has no present intention of removing therefrom. (21 American and English Encyclopedia of Law, 122.)

Residence is a question of fact. (Witbeck *v.* Hardware Co., 188 Illinois, 154.)

In order to acquire a residence, there must be a settled fixed abode and an intention to remain permanently, at least for a time, for business or other purposes. (Supervisors *v.* Davenport, 40 Illinois, 197.)

And in the English and American Encyclopedia, page 691, it is stated:

It has been said that the word "residence" is an elastic term of which an exhaustive definition can not be given, but that it must be construed in every case in accordance with the object and intent of the statute in which it occurs.

In the case of The People *v.* Owen (29 Colorado, 535) it was held that when a statute requires a district judge to reside in his district the residence contemplated was an actual as distinguished from a legal or constructive residence.

In Mitchell *v.* The United States (21 Wallace Reports, 353) the court said:

A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indespensable: First, residence in the new locality, and, second, the intention to remain there. The change can not be made except facto et animo. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, can not work the change. There must be the animus to change the prior domicile for another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject. * * * Among the circumstances usually relied upon to establish the animus manendi are: Declarations of the party, the exercise of political rights, the payment of personal taxes, a house of residence, and a place of business. All these indicia are wanting in the case of the claimant.

The principles laid down in this case are affirmed in the following cases:

Desmare *v.* United States (93 United States, 609, 612; 23 L., 960), an identical case; Chambers *v.* Prince (75 Federalist, 180), holding payment of taxes not evidence against repeated declarations of intention to return; Marks *v.* Marks (75 Federalist, 325), but holding said facts evidence tending to establish citizenship, not conditions thereof; Fulham *v.* Howe (60 Vermont, 359, 361, 14 At. L., 657), admissible to show domicile.

Doubtless the purpose of the statute was to secure the presence of the judge for the benefit and convenience of parties litigant, lawyers, and others having business before him and in his court. Long and repeated absences from his district were also, doubtless, in the judgment of Congress, calculated to put those having business before the judge and the court to inconvenience, delay, and expense, which sometimes amounted to a denial of justice. The statute is plain and mandatory, and no excuse can shield the judge from a failure to reside in his district.

The evidence tends to show that when the boundaries of the district were changed so as to exclude St. Augustine, Judge Swayne was keeping house at St. Augustine. In 1894, by act of Congress, St. Augustine and Jacksonville were transferred to the southern district, thus leaving Pensacola and Tallahassee as the only places in which a United States court is held in the northern district. After this change in the boundaries of the district was made Judge Swayne ceased to keep house at St. Augustine and stored his furniture. He says he was advised by some of his friends that the next or succeeding Congress would be Republican and that the boundaries of his distrct would be restored. After having stored his furniture he attended the sessions of the court at Pensacola and Tallahassee, boarding at different hotels or boarding houses.

The evidence shows that he has never remained in his district until this impeachment proceeding was inaugurated more than upon an average of sixty days in each year, and substantially he was in the district at no time except when the court was in session. Whenever he went away from Florida he left directions with his clerk that he would come back if needed. Letters were sent to him at Guyencourt, Del., and he spoke of that place as his home, and to that place he returned when his courts ended in Florida and again when his courts ended in other States where he had been designated to hold court. He had live stock and personal property in Delaware. His family, as a rule, lived there. They lived abroad one year. In 1900 his wife rented a house in Pensacola and lived there with him a portion of the winter, until about the time of the Christmas holidays, when she went north. Rent was paid for this house for a year or a little more, but it was not again occupied by him or his family.

He says that when he first went to Pensacola he requested the clerk of the court to find a suitable house for him to rent or to buy. The clerk never found the house, and the same witness testified that he endeavored to have a house built for Judge Swayne, but he did not succeed. Judge Swayne testified that when he first went to Pensacola he asked a bank officer to have his name placed on the voters' registry. This was not done. He was never registered in the northern district of Florida, never paid taxes, never voted, nor did he in any manner exercise the rights of citizenship. He never inquired as to whether he had been registered or not. A number of witnesses who are resident citizens of Pensacola, and had been such prior to 1890 and ever since, testified that they knew generally the citizens and residents of the town of Pensacola, and in effect that Judge Swayne never was a resident of that place.

Among these witnesses were reputable professional and business men engaged actively in their pursuits in Pensacola during the time of Judge Swayne's incumbency as judge of the northern district of Florida as presently constituted. In his first testimony Judge Swayne never asserted or claimed that he had ever acquired actual residence in the northern district of Florida as it is now constituted. Let me read what he said to the committee last spring:

Mr. PALMER. Judge Swayne will proceed and will make his statement to the stenographer.

Judge SWAYNE. I was born in 1842 in Delaware, and resided there with my parents. I read law in Philadelphia and was admitted to the bar and took my degree of B. A. in the Pennsylvania Law School. I practiced law there, with the exception of one year, until 1885, when I removed with my family to Sanford, Fla. I practiced law there until 1887, when I was burned out, when I removed with my family to the county seat, where I was residing when appointed to the bench on May 17, 1889. I took the oath of office June 1, 1889.

Mr. PALMER. That was a recess appointment, was it not?

Judge SWAYNE. Yes, sir; I can not tell positively what date I was confirmed. The confirmation came up before Congress the following December, and in consequence of the election trials, which had taken place in the meantime, the confirmation did not occur until April 1, 1890. I addressed the Senate on the subject, which can be seen by the CONGRESSIONAL RECORD of the first session of the Fifty-first Congress, volume 21, February 21, 1890, and which was a very interesting debate, showing exactly what the questions were. In the summer of 1890 I moved to St. Augustine. I think we arrived there the 1st of October, having been North on a vacation, as was the custom of most of the Federal judges, perhaps of all of them, to take such vacations.

I resided at St. Augustine with my family, and, about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July, I went with my family to Europe. In the spring, in 1900, I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

Mr. GILLETT. Was that in 1890?

Judge SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex., and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case, and then came back, as his condition was very critical and serious, and, after a week or two, perhaps, I returned and held court and finished what I had to do and got back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that had been formerly occupied by Judge A. C. Blount, in Pensacola, and moved in it the 1st of October.

I never was a registered voter and I have not voted in fourteen years. When I left Delaware I moved my domicile, and have taken no part in political questions arising in the State of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in thirty-six hours, and the record will show I have always been there to attend to anything of a serious nature.

My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summer time during my absence on

vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

Mr. GILLETT. Did the business of the court suffer because of your absence?

Judge SWAYNE. I never heard of it.

Mr. GILLETT. The summer time was the time usually taken for vacations?

Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.

Let us note—

1. That he did not move his furniture nor his family, for the reason that he thought that the next Congress would restore his district back to its original form.

2. That he told a friend at Pensacola that he had concluded not to move his furniture, and that it was well understood by the people there.

Why? Because he thought the district would be restored and it would be unnecessary to remove to Pensacola. That he was there at Pensacola for a considerable period sometimes early in October, sometimes a little later, but he was there all the time—that is the language—he was needed, unless holding court somewhere else. That is his excuse for nonresidence, "that I stayed there all the time when I was needed, and when I was not needed I was at Guyencourt, Del.," or somewhere else without the boundaries of that district where he was required to actually reside.

3. That he was there (at Pensacola) for a considerable period—sometimes early in October, sometimes a little later—and was there all the time "I was needed, unless holding court somewhere else."

4. In July, 1890, he went with his family to Europe. In 1900 he held court at Birmingham, and after that went to Pensacola and rented a house.

5. "I think I moved there early in October (1900)."

6. He then went North with his wife and son to spend Christmas in Wilmington.

7. January 12 he was at Tyler, Tex., and stayed there, holding court until February.

8. Then, after a week or two perhaps, "I returned and held court and finished what I had to do and got back to Delaware that spring."

9. In this statement he is silent as to his whereabouts after he went to Delaware in the spring of 1901 and until February, 1903.

10. He was again in Tyler, Tex., and went early to Wilmington.

11. In the spring of 1903 he bought a house from Blount in Pensacola and moved in the 1st of October.

Oh, but he had wind of these impeachment proceedings when that was done!

12. "But that (Guyencourt) has never been my home, but I have spent my summers there, mostly arriving sometimes in June and sometimes in July, and from that point I could reach Pensacola in thirty-six hours, and the record will show that I have always been there to attend to anything of a serious nature."

13. "My recollection is that no one has ever suffered from my absence * * *."

14. "My recollection is that from the testimony taken, the most the committee has on this point is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation."

15. "As near as I can recollect these are the facts which cover the period since I have been on the bench."

16. Question by Mr. GILLETT: "Did the business of the court suffer because of your absence?" Answer by Judge Swayne: "I never heard of it."

Here is a mandatory statute requiring residence, and he thinks he can excuse himself for the violation of that statute by saying as a pretext that the business of the court never suffered, or, if it did, he never heard of it.

We find from this testimony that Judge Swayne did not acquire a residence at Pensacola when he first went there to hold court after the district was changed. He stored his furniture at St. Augustine believing that next session of Congress would restore the original boundaries of his district. In his last statement made before the subcommittee of the Judiciary Committee in November, last month, he said:

Many of my friends suggested that the next Congress might change the boundaries of the district back so as to put St. Augustine again in the district, and that I should not move furniture until that was determined.

And then goes on to say:

But I announced that it was my intention to move my residence to Pensacola, and I then and there made Pensacola my residence.

His first testimony clearly indicated an intention on his part not to change his residence, and that he stored his furniture at St. Augustine to await the restoration of his district to its original boundaries, which included St. Augustine.

And then in his second testimony, given after the committee of this House had reported that he was a nonresident of the district as now constituted, and after he had been heard on the subject, he goes on to say:

I came to the Escambia Hotel in Pensacola, Fla., and registered as follows: "Charles Swayne, City," and announced to my friends there repeatedly that I was now a resident of Pensacola.

It is very strange that he omitted to make this statement when his nonresidence of the district was charged against him last spring and when he then testified, and it is also strange that he was unable to prove that he had announced repeatedly that he was a resident of Pensacola. If he had become a resident of Pensacola, why was it necessary for him to repeatedly announce the fact? If he did repeatedly make this announcement, it was done because he knew he had not in fact acquired residence there, and he was manifestly endeavoring to establish a residence which he knew he had not acquired by making a declaration of his residence.

Every indicia of residence on the part of Judge Swayne at Pensacola is totally lacking in this case except the fact that he held court there, was there throughout the holding of the court, and that his wife stayed there with him three months; that he rented a house for about a year. There is an entire absence of evidence of residence. Now, suppose a neighbor of the Speaker of this House were called upon to state where the residence of the Speaker is. Would there be any difficulty in his answering that question? He would say, it is in Danville, Ill. How do you know? Why, I know he owns a home there; I know his family lives there; I know that after Congress adjourns he goes there and stays there; I know that his business is there; I know that he pays his taxes there, personal and real, and I know that his property is there—I know all these things; I know that he votes there. But in this case there is an entire absence of any indications of residence.

Now, residence being a question of law and fact, it is difficult to frame a proper legal question to a witness on that subject; but the witnesses all testified, in effect, and we are authorized to draw that conclusion from the testimony—not all of the witnesses, but a large number of them, and their names will be found there in the printed book of testimony—that he was not a resident of Pensacola, and they mentioned many of these circumstances to which I have alluded to prove that he was not a resident of that place.

Adverting to the declarations, it would not be necessary for the gentleman from California to go about the streets of his town announcing that he is a resident; it would not be necessary for the Speaker of this House to go about the streets of Danville, up and down them, crying "I am a resident of Danville." It is a plain fact, and it is not necessary to repeatedly declare. It is unnecessary for an honest man to repeatedly say "I am honest," nor is it necessary for a virtuous woman to constantly proclaim her virtue. If she did, I might say, in the language of the Shakesperean character, "The lady doth protest too much, methinks."

In The People *v.* Estate of Moir (207 Ill., 186) it was said:

In this case the evidence relied upon to show a change of residence of Mr. Moir from Oquawka to Burlington consisted wholly of the proven declarations of the deceased. While such declarations are admissible in evidence they are not considered a high class of evidence, and when the acts of the party are inconsistent with his declarations the declarations are entitled to but little weight. (Kreitz *v.* Behrensmeyer, 125 Ill., 141.)

And, again, it was held in Kreitz *v.* Behrensmeyer (125 Ill., 197):

That declarations in regard to present or future domicile or future residence are admissible in evidence, but that they are the lowest species of evidence, and that such declarations may be disputed by his acts.

Now, Judge Swayne's first testimony is set out in the first report made by the committee on this subject, and you will observe from that that he did not claim to have acquired an actual residence there. He framed a series of excuses why he had not acquired that residence, and then he undertakes to justify his nonacquirement of the residence by saying that no business ever suffered because of his failure to so acquire a residence; that nobody suffered any detriment because of his absence from the district. He never asserted that he had acquired the actual residence. Now, I lay down this proposition, that no man can have a legal or constructive residence in any community until he has first acquired an actual residence. An actual residence can be acquired in the different ways that I have mentioned, or, rather,

the different circumstances which I have mentioned in the case furnish evidence that he has a residence in that place. Now, did he ever acquire an actual residence there? I challenge any man to name when and how he acquired it. Then I will interpose against his assertion these facts and negatives. I will interpose his excuses, by which he seems to have thought that he could exculpate himself for nonrequirement with the statute by giving these excuses.

From 1896 to 1904 his court was open for business four hundred and ninety-two days and no more, being an average of sixty-one and one-half days per annum for eight years. There was no testimony to show how many days the court was open during the years 1894 and 1895.

Except for having been in Pensacola and Tallahassee during the sittings of his court, the occupancy of a house for about three months at one time with his family, and his request of a bank officer that his name be put on the voters' register, and his request that a suitable house be found for him to rent or buy, and that one be built for him, there is nothing to show that he ever acquired an actual residence in the district, either at Pensacola or Tallahassee. The evidence offered in his defense on this point can be no more than excuses for not having complied with a plain statute commanding him to reside within the district.

A man's legal residence is where, after having gained an actual residence, he intends to reside, but he can never gain a legal residence without having first acquired an actual residence. The statute requires an actual and legal residence. His declarations of intention to acquire a residence in the district can not constitute a compliance with the statute. The purpose of this statute was manifestly to require the physical presence and actual residence of the judge within his district, where the Government and the people who had need of his official services could have them. It is evident that Judge Swayne saw the force and effect of this statute, which he had so long defied, after the present impeachment proceedings were inaugurated, for since they were begun he seems to have endeavored to acquire residence. But this can not excuse him. The impeachable offense had been committed and it can not be cured by a subsequent act.

His request of a bank cashier to be put on the list of registered voters, which was not done and about which he made no subsequent inquiry, and what he said to the witness about finding a suitable house for him to buy or rent, and what he also said to the same witness about having him a house built, in their nature amount to no more than a mere declaration on his part of a vague intention at some time to acquire a house in one way or the other at Pensacola. I have already adverted to his statement that he repeatedly said that he was a resident of Pensacola.

In view of the facts in this case it may be well said that these declarations as to residence, while admissible evidence, are the lowest species of evidence, and that such declarations are indeed disputed by his acts. I refer again in this connection to Kreitz *v.* Behrensmeyer. (125 Ill., 197.)

And while on the subject of his declarations it is well to note that Judge Swayne, according to the testimony of several of the witnesses, often spoke of Delaware as his home. Let me note what he said in his last testimony before the committee last month:

By Mr. PALMER:

Q. You say you rented the Simmons cottage in October of what year?—A. 1900.

Q. Now, I recollect before that it was testified you occupied the cottage for a few months, and then went North about Christmas time. Is that correct?—A. That is correct.

Q. How many months, in point of fact, did you and your family live in the Simmons cottage?—A. I do not know.

Q. Can you give any estimate of the number of months you lived in the Simmons cottage?—A. I can not. I know that my son was taken seriously sick, broke down in college from nervous prostration, and I had to hurry home to him.

Q. You mean, when you say "hurry home," to Guyencourt, Del.?—A. He was in Wilmington, Del., with his sister, and I went up there to Delaware, where I was born, and spent all the time I could with him, and came back to hold court.

At what time, until after these impeachment proceedings were begun, did Judge Swayne acquire a legal residence in the northern district of Florida? Where and how did he acquire it? He certainly did not acquire such residence by boarding there the sixty days during the sessions of his court. He certainly did not acquire it by the act of giving up housekeeping at St. Augustine and storing his furniture, believing that the district would be restored to its original boundaries, so that it would be unnecessary for him to move away. He certainly did not acquire a legal residence at Pensacola by asking a bank cashier to have him registered as a voter. He certainly did not acquire such residence by asking the clerk of his court to find a suitable house for him in Pensacola, which house was not found.

I repeat that at most the testimony in his behalf shows that he had a vague intention at some undetermined future time to reside in Pensacola when he could buy or build a house, but the evidence shows conclusively that he was indifferent to a compliance with this statute until these proceedings were begun. Certainly the fact that he held court in other States does not furnish any evidence that he had a residence in the northern district of Florida. We submit that his excuses and his requests to be registered and to find him a suitable house do not exculpate him. This is a statute highly penal and must be strictly construed. It enjoins the imperative duty of residence in the district. The evidence shows that he has failed or refused to obey this law according to its plain intent, and he should be impeached.

Now, Mr. Speaker, upon the charges of having wrongfully imprisoned Simeon Belden and E. T. Davis and W. C. O'Neal, and for his appointment of Tunison a United States court commissioner I shall, doubtless, if this resolution be adopted, take occasion to make some remarks showing that charges of impeachment should be predicated upon those matters, but I have already trespassed longer than I intended upon your patience, and I now come to the last proposition, which I believe the gentleman from Pennsylvania urged for your consideration. Now, all of the committee agree that he should be impeached upon this ground—they differ as to some of the other grounds—the majority holding that he should be impeached upon several grounds.

I desire to call the attention of the House to the fact that all of the committee agree that he should be impeached upon the ground that I have just referred to.

I regret that the gentleman from California has gone, as I believe he concurred in that conclusion.

Mr. LITTLEFIELD. The gentleman from California is present.

Mr. CLAYTON. I would like his attention.

Mr. LITTLEFIELD. He is listening to you.

Mr. CLAYTON. He does not dispute it, then?

Inasmuch as it is agreed upon, and the House doubtless has not had an opportunity to read this testimony since it was taken a few days ago, I desire now to recite briefly the law and the evidence in support of it.

The act of Congress of 1871, Revised Statutes, section 596, provides, when a district judge is assigned to hold court of his district, that "it shall be the duty of the district judge so designated and appointed to hold the district or circuit court aforesaid without any other compensation than his regular salary as established by law."

And the act of March 3, 1881, 21 Statutes at Large, 454, provides that "so much of section 596, Revised Statutes, as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed."

The act of June 11, 1896, 29 Statutes at Large, 451, provides that—

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

It is his expenses while attending court. The gentleman from Iowa [Mr. LACEY] a while ago fell into error, it seemed to me, when he seemed to think that the construction to be put upon this statute was that the judge was to have pay for his attendance. This statute provides, I contend, for expenses for traveling and expenses while in attendance, and not for compensation for holding court. Now, I submit it to any lawyer if the statute does not mean that—for reasonable expenses for travel and reasonable expenses for attendance while attending court—his expenses incurred necessarily in the process of his attendance upon the court; not compensation. It would be a sweep of the imagination to put any other construction upon the statute.

Undoubtedly the statute means actual expenses of travel and actual expenses incurred while attending court, and the word reasonable, instead of being an enlargement or liberalization of the statute, is a limitation, and restricts the actual expenses to reasonable actual expenses.

[Here the hammer fell.]

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. LITTLEFIELD. I ask unanimous consent that the gentleman may be permitted to complete his remarks.

The SPEAKER pro tempore. Unanimous consent is asked that the gentleman may have time to complete his remarks. Is there objection? [After a pause.] The Chair hears none.

Mr. CLAYTON. On the hearing of the testimony by the subcommittee of the Judiciary Committee it was admitted by the counsel of Judge Swayne for him, the judge being present, that Judge Swayne had made and signed the certificates prescribed by law for the following sums:

Name of marshal paying voucher.	Account No.	Place of holding court.	Period covered by voucher.	Amount paid.
Guillotte	9349	Baton Rouge, La	Apr. 19 to May 4, 1895	$140
Do	9349	New Orleans, La	May 13 to May 31, 1895	170
Love	18650	Waco, Tex	30 days from Nov. 18, 1895	300
Do	18650	Dallas, Tex	40 days from Jan. 21, 1896	400
Do	18650	Graham, Tex	2 days from Mar. 9, 1896	20
Do	26252	Waco, Tex	18 days from Apr. 27, 1896	180
Do	26252	Dallas, Tex	36 days from May 18, 1896	360
Do	29482	Waco, Tex	28 days from Nov. 18, 1896	280
Do	35513	Dallas, Tex	42 days from Jan. 11, 1897	420
Do	35513	Fort Worth, Tex	12 days from Mar. 1, 1897	120
Do	36910	Waco, Tex	23 days from Apr. 20, 1897	230
Do	36910	Dallas, Tex	39 days from May 17, 1867	390
Guillotte	61252	New Orleans, La	19 days from Jan. 1, 1898	190
Do	44704	do	40 days from Jan 20, 1898	400
Do	44704	do	11 days from Mar. 1, 1898	110
Do	44704	do	10 days from Mar. 11, 1898	100
Do	44704	do	10 days from Mar. 22, 1898	100
Do	61252	do	10 days from Apr. 1, 1898	100
Do	61252	do	15 days from Apr. 16, 1898	150
Do	61252	do	10 days from May 1, 1898	100
Do	61252	do	19 days from May 11, 1898	190
Fontelieu	54281	do	19 days from Nov. 21, 1898	190
Do	54397	do	10 days from Jan. 30, 1899	100
Do	54397	do	10 days from Feb. 8, 1899	100
Do	54397	do	10 days from Feb. 18, 1899	100
Do	54397	do	10 days from Feb. 28, 1899	100
Do	54397	do	10 days from Mar. 10, 1899	100
Cooper	56988	Birmingham, Ala	28 days from Apr. 4, 1899	280
Do	56988	do	19 days from May 22, 1899	190
Do	60217	Huntsville, Ala	29 days from Oct. 9, 1899	290
Fontelieu	70206	New Orleans, La	10 days from May 24, 1900	100
Do	70206	do	10 days from June 2, 1900	100
Do	70206	do	5 days from June 12, 1900	50
Cooper	69592	Birmingham, Ala	29 days from Sept. 3, 1900	290
Do	73109	do	8 days from Sept. 3, 1900	80
Grant	71960	Tyler, Tex	31 days from Dec. 3, 1900	310
Cooper	78334	Birmingham, Ala	21 days from Sept. 2, 1901	210
Houston	93964	Tyler, Tex	41 days from Jan. 12, 1903	410

I will not trespass upon the time of the House by reading the testimony, which was excellently stated and summarized by the gentleman from Pennsylvania [Mr. PALMER], but I will here insert it in the RECORD.

And it was admitted that he received payment of $10 per day as his reasonable expenses for travel and attendance for each day that he held court out of his district. This account shows that he charged $10 per day for each day.

The testimony showed that he paid for board and lodging at Waco, Tyler, and Dallas, Tex., from $1.25 to $3 per day, and that his traveling expenses to and from Pensacola to each of these places in Texas could not in any case have exceeded $50. I read from the testimony:

Witnesses with whom Judge Swayne boarded at Fort Worth, Dallas, Tyler, and Waco, in hotels and boarding houses, during the times when he held court in those places, testified in part as follows:

Samuel McIlhenny, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Give your name in full.—A. S. C. McIlhenny.
Mr. HIGGINS. What is your first name?
The WITNESS. Samuel.

By Judge LIDDON:

Q. Your residence?—A. Dallas, Tex.
Q. Your business or occupation?—A. I am manager of the Oriental Hotel.
Q. How long have you been such manager?—A. Eight years.
Q. Were you such manager in January, 1896?—A. No; I was in the office in 1896. I was connected with the house.
Q. In January, 1896?—A. Yes, sir.
Q. Did you know Judge Charles Swayne?—A. Yes, sir.
Q. How long have you known him?—A. Well, I did not know the Judge until I went to the hotel. I was in a former hotel there. He was there when I first went to the hotel.
Q. He was at the Oriental when you first went there?—A. Yes, sir.
Q. You say that was when?—A. In 1896.
Q. Do you know the date in 1896?—A. The first part of the year; I don't know exactly the date—either January or February. In January, I think it was, some time.
Q. In January?—A. Yes, sir.
Q. Do you know whether Judge Charles Swayne was at Hotel Oriental in January, 1896?—A. He was there when I went there. I went there in the latter part or middle part of January.
Q. Do you know when he left?—A. No; I do not.
Q. Can you refresh your memory from that memorandum—did you make that [submitting paper]?—A. The cashier or bookkeeper made that——
Judge LIDDON. I submit this as an exhibit:

EXHIBIT F.

DALLAS, TEX., *March 5, 1896.*

Mr. Chas. Swayne to the Oriental, Dr.

[S. E. McIlhenny, manager.]

March 1 to 3/6, 6 days		$16.00
For board month of Feb. 9 to 2/29, 20⅓ days		68.35
Feb. 1 to 2/9, 8⅓ days		19.80
Express, 2/3, .60		.60
Laundry, 2/12, 1.30, 1.10; 3/5, .75		3.15
Wine, etc., 2/26, .40		.40
Telegrams, 2/24, 1.15		1.15
Drugs, 2/6, 1.35		1.35
		110.80
3/6, cr. by rebate on rate	$13.80	
3/6, cr. by cash	97.00	
		110.80

The WITNESS (continuing). But I looked over it.
Q. Is that his handwriting?—A. Yes, sir.
Q. He is in charge of the books there?—A. Yes, sir.

By Mr. PALMER:

Q. Did you examine it to ascertain if it was correct or not?—A. Yes; I looked over it when he made it off the board book.

By Judge LIDDON:

Q. Do you know how much he paid for his board there in January, 1896?—A. I do not; only from this memorandum.
Q. Can you tell from that memorandum?—A. Yes, sir.

EXHIBIT G.

DALLAS, TEX., *January 31, 1896.*

Mr. Chas. Swayne to the Oriental, Dr.

[S. E. McIlhenny, manager.]

For board month of Jan. 20 to Jan. 31, 1896		$26.80
Laundry, 20/95		.95
Wine, etc., 20/55		.50
		28.25
Cr. Feb. 5, 1896, by chk		28.25

Q. How much was it?—A. According to that, in January he paid $28.25. The books correspond with this statement exactly; that is, in January.
Q. He paid $28.25?—A. Yes.
Q. Now, were you connected with the same hotel—you said you were—in March, 1896?—A. Yes, sir.
Q. Do you know whether Judge Swayne stopped at that hotel, then, in February or March, 1896?—A. Yes, sir.
Q. Do you know how much he paid?—A. He paid cash $97.

Mrs. Annie E. Russell, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you live?—A. Tyler, Tex.
Q. How long have you been there?—A. About twenty-two years.
Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.
Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.
Q. That was at Tyler?—A. Yes, sir.
Q. Did Judge Swayne ever board with you there?—A. Yes, sir.
Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during that trial of the bank there.
Q. In the United States court room?—A. Yes, sir.
Q. Do you know in what year it was?—A. It was last year.
Q. 1903?—A. Yes, sir.
Q. Do you know what part of the year—the early part or the latter part?—A. It was January, as well as I can recollect.
Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.
Q. You do not know how long; could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.
Q. Do you know what rate of board he paid you?—A. Yes, sir; $1.25 a day.
Q. Did that include lodging?—A. Yes, sir.
Mr. CLAYTON. That included table board and lodging?
A. Yes, sir; everything.

By Judge LIDDON:

Q. $1.25 a day?—A. Yes, sir.
Q. In the early part of the year 1903 he was there from four to six weeks?—A. He was there during the whole term of court.

Susan Lyle Downs, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you reside?—A. Waco, Tex.
Q. You are engaged in the business of keeping a boarding house or hotel there?—A. A private boarding house.
Q. How long have you been so engaged, madam?—A. Seventeen years.
Q. Do you know Judge Charles Swayne?—A. Yes, sir.
Q. Has he ever been a guest of your house?—A. I think three terms of court. Of course, I am not sure, but that is my recollection.
Q. Three terms?—A. Three terms of court.
Q. Can you fix the date?—A. No, sir; I can not.
Q. Can you say whether it was since 1895?
Mr. HIGGINS. Speak of your own knowledge and without suggestion.
A. I really could not answer as to the year he was there. I could not; do not.

By Judge LIDDON:

Q. You can not say how many years, or approximate how many years ago?—A. If you can tell when Judge Rector was disabled, I could tell you, but otherwise I can not.
Q. It was while he was holding United States court?—A. Yes, sir.
Q. And he stopped with you three terms?—A. Yes, sir.
Q. Did you ever know him to hold United States court there at any other time except the three times he stopped with you?—A. No; I don't remember it.

Q. Do you know how long he stopped with you at the time he was there?—A. No, sir; I do not. I know he was at the term of court, but I never made any memorandum of it.

Q. During a term of court three times?—A. I think so.

By Mr. CLAYTON:

Q. Do you mean the term while the court was lasting, the whole session of the court?—A. Yes.

Q. Not just for a day and then a day?—A. Oh, no.

By Judge LIDDON:

Q. You can not approximate how long he would stay at a time?

Mr. PALMER. About?

A. I really do not know.

By Mr. CLAYTON:

Q. Was he a transient, or did he stay a day or half a day?—A. He stayed during the whole term. I suppose probably from three to five weeks possibly.

Judge LIDDON. At a time?

A. Yes.

Mr. CLAYTON. That is to the best of your recollection, from three to five weeks?

By Judge LIDDON:

Q. Do you know what rates you charged him for board?—A. At the rate of $40 for himself and $65 for himself and wife.

By Mr. CLAYTON:

Q. What is that, per month?—A. Per month. I do not want to do any injustice here. That is to the best of my knowledge.

By Judge LIDDON:

Q. And $65 per month when he had his wife with him?—A. Yes, sir.

Q. Are those your best rates?—A. Yes, sir.

Q. All you ever charged?—A. Yes, sir.

Q. You said he was there sometimes without his wife?—A. I think two terms without Mrs. Swayne; one term with her.

Q. When he was there without her it was $40 a month, or $65 for the two?—A. Yes, sir.

Q. That included room as well as board?—A. Room and board.

Q. Was it winter or summer that he was there?—A. I am not sure whether it was two fall terms or two spring terms of court. There was one term and then two of the other.

Let me again say that the statute which allowed these expenses seems to be too plain to admit of any double construction. "Reasonable expenses * * * not to exceed $10 per day each," means actual expenses incurred, and there is but one qualification, and that is that the expenses shall be reasonable and not unreasonable, although actual expenses reasonable, that is, necessary and ordinary expenses.

In Dunwoody *v.* United States (22 C. of Cls., 269, 278) it was held:

"Expenses," as used in an act appropriating money for salaries and expenses of the National Board of Health, means those expenses which are necessarily incident to the work directed to be done, including payment for clerk hire or office rent.

And in Heublein *v.* City of New Haven (54 Atl., 298, 299; 75 Conn., 545) it was held that—

The word "expenses," as used in a city charter providing that the selectmen shall receive a certain sum per hour for the time spent in their duties and their necessary expenses, means something due to the selectman for money paid by him or debt incurred by him necessarily in the performance of his duty.

I read in the hearing of the House these cases construing statutes allowing expenses and fees, and I promised the House at that time to refer to another case, that of Shields against The United States, construing a statute allowing fees. In the United States *v.* Shields (153 U. S., p. 91) it is said:

It is true in the present case that the district attorney has made no claim for a per diem allowance for Sunday, but it certainly can not be held that this left it optional with him to waive his per diem fee and take mileage to and from his home in lieu thereof, as a matter of pleasure or convenience to himself, especially when the mileage exceeded the per diem allowance. Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts nor to any discretionary action on the part of the officials.

I believe that Judge Swayne has, under the guise and pretense of alleged expenses, charged the Government on different occasions very material sums of money in excess of what his expenses were. Certainly this is a grave misconduct in office. In the ordinary and parliamentary sense it constituted a high misdemeanor and an impeachable offense. It was dishonest and corrupt and authorizes his impeachment, conviction, and removal from office.

But while he is impeachable for this offense without any special statute denouncing such conduct to be a crime, it so happens that there is a positive law forbidding such conduct and making it a crime. Section 5438 of the Revised Statutes covers this case, and it is in this language:

Every person who makes or causes to be made, or presents or causes to be presented for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any Department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any Department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certification or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

And in The State *v.* Moore (57 Tex., 320) and Wharton County *v.* Ahldag (84 Tex., 15) the doctrine is there also maintained that statutes allowing fees must be strictly construed and against the claimant.

Now, Mr. Speaker, as the time is limited and at the suggestion of the chairman of the committee, I shall not proceed with all I had to say upon this subject. I thank the House for its considerate attention.

Mr. HUNT. Will the gentleman give us information as to whether Judge Swayne was a resident of the State when he was appointed judge?

Mr. CLAYTON. He said at the time he was appointed that he had a home at Kissimmee, Fla., and after he was appointed he moved to St. Augustine, took and occupied a house there, and he claims that his residence was there; but the case is entirely lacking of any evidence to show that after the district was changed and St. Augustine excluded from the northern district he ever acquired a residence in the district, either at Pensacola or Tallahassee, in the northern district as now existing.

Mr. GILLETT of California. Mr. Speaker, I have listened with a great deal of interest to the arguments presented by the gentleman from Pennsylvania [Mr. PALMER] and by the gentleman from Alabama [Mr. CLAYTON]. I was a member of the subcommittee appointed by the Committee on the Judiciary to investigate the charges preferred in this House by resolution against Judge Charles Swayne, of the northern district of Florida. We went to Florida for the purpose of taking the testimony of witnesses, and after a number of days of careful consideration of the same we were unable to agree, not alone on the facts, but whether or not the charges made were of such a character as would warrant us in recommending impeachment proceedings. And it is on some of these charges that I desire briefly to address this House. I consider this one of the most serious occasions that can come before this honorable body. We are charged with a grave duty, and we ought to discharge it conscientiously, without any feelings of malice or prejudice, and weigh the matter with great candor and care in order that no injury shall be done to anyone. In this spirit I have examined the evidence in this case carefully, and until recently I have been unable to find, on the charges preferred by the resolution against Judge Swayne, any evidence or any facts that would warrant us in finding sufficient grounds on which to impeach him. The following resolution was offered here and passed in December last:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law; whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

Before proceeding to take testimony under this resolution, which appears to be quite general in its terms, the committee called upon Representative LAMAR of Florida, the author of the resolution, to specify more particularly the grounds which were relied upon. In response to that request thirteen specifications were preferred, and we started to take evidence on the same. It was not until a few days ago that there was injected into the case two distinct matters which were not referred to in the resolution or referred to in the specifications furnished by Mr. LAMAR of Florida. But I undertake to say that, notwithstanding these matters were brought up at the last moment, they hav-

ing been but recently brought to the attention of this House, it is proper to consider them, although not referred to in the resolution. To that matter I shall address myself later on.

Of these thirteen specifications all were abandoned except three or four. The question of residence, the question of the rightful or wrongful act of finding O'Neal guilty of contempt, the question involving the Hoskins matter, and the finding of Belden and Davis guilty of contempt were considered by a majority of the Judiciary Committee sufficient to warrant a report in favor of impeachment. And, inasmuch as the gentleman from Pennsylvania [Mr. PALMER] and the gentleman from Alabama [Mr. CLAYTON] have only considered those grounds, I will only call your attention to them as I understand them.

First, take the question of residence. In 1885 Judge Swayne moved from Pennsylvania to the State of Florida, established a home there, and commenced the practice of the law. In 1889 or 1890 he was appointed district judge of the northern district of Florida. He moved his family to St. Augustine, that being a city within his district. He resided there continuously during several years until there arose a strong political feeling in that State, which finally resulted in the changing of the lines of the district and legislating him out of Jacksonville and St. Augustine. After this was done he was no longer residing in his district. What did he do? The question of residence now arises. Judge Swayne tells us that he knew the law required him to reside within his district. It is to his intention, coupled with his acts, that we are to look to see whether or not such residence was established. He says he went at once to Pensacola and registered at the Escambia Hotel as from that city. He spoke to the clerk of his court, asking him to try and find for him a suitable place in which to live. He also called upon Captain Northrup, a prominent citizen of Pensacola, to try and find for him such a place. These gentlemen tell us that, acting at his suggestion, for three years they sought to find a suitable house in that city where Judge Swayne might make his home. During this time he was living in the Escambia Hotel or with Captain Northrup. He had a room there which was known as "Judge Swayne's room." His family visited him there; and the law is that when a person holds an office during good behavior the presumption is that he resides within the district where he is to perform the duties of his office. So that this presumption attaches in Judge Swayne's case.

Not only did he, through his friends and himself, seek to hire or rent a place, but he went so far as to make arrangements to build a house that he might live in.

This continued for several years, until in 1890 he finally succeeded in renting the Simmons house. He moved his furniture there, he took his family there, he resided there, he made his home there; not all the time, but there was his abiding place. He had no home in Guyencourt, he had no home in Pennsylvania, he had no home any place in the world excepting in Pensacola, Fla. There is where his home was; he paid taxes on his furniture, or his wife did; he paid his insurance and he stayed there. It seems to me this must go to show the intent on his part to make that city his home, and that city is within his district.

Now, in 1893 his wife purchased a piece of property in Pensacola for a home. Shortly afterwards they moved into this place and made their home there. It has been said that he did not reside on this piece of property. Judge Swayne in his own statement says that he did. You have only to read his own statement to show that he did. It is sworn to by Marsh and others that he did reside in this home where his furniture was. Does not that go to make up a residence? The prosecution submitted to us names of a number of witnesses to prove that he lived in Guyencourt, Del. We called upon them to bring these witnesses here to be examined, and notwithstanding the assertion that was made, not a single witness from Delaware, where they try to make you believe he lived, was brought before the committee, and they sent men into that territory to investigate and find out, so as to swear to it.

Now, if he lived in Delaware, if he had his personal property in Delaware, if he had his home in Delaware, his neighbors and his friends must have known it. But, with all the efforts and industry of these gentlemen touching this matter, they were unable to bring before the committee a single witness who would testify that Judge Swayne resided or had a home in Delaware. They say that he did not pay taxes, that he did not vote in his district. These facts are not necessary in order to establish a residence, or to fix one's intent. Many men living in the South do not pay taxes and do not vote, although they were born and have their homes there. This is true also of the North. It is no evidence at all of what his intention was that he did not pay taxes or vote. When Judge Swayne went off to a place outside of his district to hold court, he registered "Charles Swayne, Pensacola, Fla.;" and that was long before he knew that these impeachment proceedings were coming on; long before they were ever spoken of or mentioned.

Suppose that a gentleman here going into another city, myself, for instance, should register "Eureka, Cal.,' as I always do without any thought of the future, would not that be strong evidence of where I considered my home to be? This is what Judge Swayne did. Now, in face of this fact, in face of the fact that he requested that his name be placed on the great register, in face of the fact that he had two men trying to find him a home, in face of the fact that he tried to build a home, in face of the fact that at last he did buy one—or his wife did—and that he moved his family into it long before these proceedings commenced, can we now say that he has violated the laws of his country, that he has not been a resident of his district, and that he ought to be impeached therefor?

Why, suppose the only question before this body was the question of residence, and you had the statement made by Judge Swayne and witnesses in his behalf, would this House for one moment impeach him on that ground alone? Certainly not, because it is not sufficient.

Mr. PALMER. Will the gentleman allow me an interruption?

Mr. GILLETT of California. Certainly.

Mr. PALMER. Will the gentleman state how many days Judge Swayne was actually in the district for the first six years?

Mr. GILLETT of California. I do not know how many days he was in the district, and no member of the committee knows. It appears that he held court a certain number of days, but when a man is in a place he is not all the time holding court. I do not know how many days he was down there except when he was holding court. I say it makes no difference if he was not there more than twenty days, he might be somewhere discharging the duties of his office, and he would not lose his residence for that reason. When he was away trying cases in his circuit or visiting his aged mother in Guyencourt, was he getting a residence somewhere else? Was he establishing a home in some other country? No; the records show that he was in Florida and Alabama and in Texas, directed to go there and hold court, and when he was there he was discharging his duty to the best of his ability.

Mr. PALMER. Will the gentleman answer another question?

Mr. GILLETT of California. With pleasure.

Mr. PALMER. Does not the testimony show that the only time he was in the State of Florida was when his court was in session, and does not the testimony show that that was an average of sixty-one days a year?

Mr. GILLETT of California. I do not understand it that way. I understand that we took a number of days from the docket of the court when the court was called and found that he held court there on an average of sixty-one days a year. We found, also, that he was holding court in other States and districts on an average of about seven months a year, and this shows where he was at least a great part of the time.

Mr. PALMER. Mr. Speaker, may I ask the gentleman another question?

Mr. GILLETT of California. Yes; the gentleman can ask as many as he pleases.

Mr. PALMER. Does not the testimony show that he held court on an average, during the eight years from 1894 to 1903, ninety-three days a year, and where was he during the other two hundred and twelve days?

Mr. GILLETT of California. The testimony shows that in 1895 he held court three months—April, May, November, December—outside of his district—not all the days during those months, but in those months in 1895. In 1896 the evidence shows that in January, February, March, April, June, November, December—eight months—he held court outside of his district, being sent there by judges superior to him. In 1897 the record shows that during the months of January, February, March, April, June, July—seven months—he held court in those other States, and the record also shows that in 1899, during the months of January, February, March, April, May, June, October, November—eight months—he held court in these other States, having been sent there by his superiors. In 1900 the evidence shows he held court during January, May, June, September, October, November—six months—out of his district; and in 1903, January and February. I shall not contend that every day from the first of the month to the last he was sitting there holding court, but I do contend that during those months he was going back and forth to those courts and discharging his duties as a judge, and rendering his decisions; and I also say that because a judge was absent for that reason it is no argument that he had no residence in Florida, where

he came from. Why, when he was directed to hold court, the order would go out that Judge Swayne, of the northern district of Florida, whose residence is at Pensacola, should go and hold court in these different districts, and yet the gentlemen are seeking to impeach this man—this judge—simply because he did not pay taxes, he did not vote, and was not in his district all of the time. He was there whenever his court business demanded that he should be there. There is no evidence that anybody suffered any injury by reason of the fact that he was not there. His docket was kept clean all the time, and he was sent out of his district to hold court because he, of all the other judges, was the least busy; because, on account of political troubles, a large part of his district had been cut off, and which ought to be restored. So much for the question of residence.

Mr. STEPHENS of Texas. Mr. Speaker, will the gentleman answer a question?

Mr. GILLETT of California. Yes.

Mr. STEPHENS of Texas. I read in the Boston Globe, of December 12, yesterday, that Judge Swayne himself states that on an average of the last seven years he has held court only sixty days while in the district, and outside of the district ninety-three days. Is that approximately correct?

Mr. GILLETT of California. I do not know.

Mr. STEPHENS of Texas. That comes from the judge himself, this statement in the Boston Globe.

Mr. GILLETT of California. That may all be true, but can you impeach a man when you have cut down his district for political reasons, so that he has no business in it, and say that because he only held court sixty days a year that he did not reside there? If he had had business in his district, he would have remained there and discharged it. It is because he had no business there, because he could be sent abroad, that they chased him from Alabama away down through Texas nearly every month in the year, as shown by the record; and there is no complaint that he did not discharge his duties well. I believe that this charge of nonresidence ought not to be considered for one moment by this honorable body. I do not believe it has been established. A crime has been charged, and it is a crime, if this charge is true, which must be established beyond all reasonable doubt and to a moral certainty. You can not guess at it. It is a crime under the statute for a judge not to reside in his district, and it must be tried as crimes are tried, and I submit it is not proved beyond a reasonable doubt that Judge Swayne never had a residence in northern Florida. He always returned to his district when away, either on business or pleasure, because it was his home, the place where he was to discharge his official duties. It is true that he went to Guyencourt, Del., during the summer. His mother had a homestead there, where she and her husband had resided for many years. She is an old and feeble lady. And because, in the heat of the summer, when the rest of the judges of the South are taking their vacations, Judge Swayne went back to his mother's place, in Guyencourt, Del., to the old homestead, to visit and be with her, to say that he lost his residence in Florida and gained one in Delaware is absurd. Who ever heard of his voting in Delaware?

Now, on the question of Belden and Davis, the majority of the committee recommend that Judge Swayne be impeached because of his wrongful, unlawful, and arbitrary conduct in imposing a judgment of contempt against those two lawyers in his court.

Let us look at the facts out of which this controversy arose. There was a case pending in Judge Swayne's court which was termed the "Florida McGuire case." The land involved in the case was described as a large tract of land running from trees, upstream, etc., the description being so indefinite that no surveyor could locate it. This case was pending in his court. During the summer his wife was seeking to buy some property of Thomas Watson & Co. Among this property, which she was seeking to purchase in her own right, was a block called "block 91," and deeds were made out in her favor and sent to Judge Swayne, at Guyencourt, where he then was. A quitclaim deed was offered. Now, Judge Swayne could have had no knowledge of the fact that this block 91 was within the tract. It was a block described like many other lots and blocks were described, and there was nothing in the pleadings that would indicate or call to his attention or raise the least suspicion that this particular block of land was involved in the suit; but as soon as inquiry was made, as soon as he learned it was involved in the land which he was trying the title to, he told Thomas Watson & Co. he would not take it. His wife did buy the other two pieces of property, but this piece of property was absolutely excluded. This is all Judge Swayne could do. He never bought it. He never owned it. He never was in possession of it, and as soon as he found it was involved in litigation pending before his court that was the end of it. Now, along in the fall——

Mr. LITTLEFIELD. Right there, there is not a thing in the record that indicates that he even knew it was included in the tract he was negotiating for.

Mr. GILLETT of California. Nothing at all; there was no evidence showing that fact. The description of the property would not tell it to him. He could not read the complaint and know it. Immediately after it came to his notice he advised the agents of the owner that he would not take it. Now, Judge Belden, Judge Davis, and Judge Paquet wrote to him asking him to recuse himself on the ground that he was an interested party. He very soon left for Pensacola, and he did not answer this letter; but the first day court was called and all interested parties were present in court Judge Swayne brought the matter up and made a statement in their presence concerning this matter. Now I will give the testimony of Judge Blount, one of the leading lawyers of Florida, on this subject. This is the evidence:

Mr. HENRY of Texas. Will the gentleman permit an interruption? What date was it the judge made his first statement in reference to this land?

Mr. GILLETT of California. This date was immediately upon his coming to Pensacola. Immediately on opening court in the presence of the attorneys for the plaintiff in that action, and I want to read from the testimony of Judge Blount, who was an attorney for the defendant on that occasion and was present in the court and heard his statement.

Mr. HENRY of Texas. What was the day of the week and day of the month he made that statement? He made two statements, and I want to get that clearly before the House.

Mr. GILLETT of California. On November the 5th, in open court.

TESTIMONY OF MR. BLOUNT.

The judge stated that he had not purchased any such land; that his wife had, through him, negotiated for the purchase of a block of that tract, but when the deed was sent to close the trade he saw it was a quitclaim and he asked why a warranty deed had not been given. The reply by Watson & Company, Edgar's agents, was that the reason a warranty deed was not given was because this land was in controversy in this suit, and he did not care to give a warranty. Judge Swayne learning this, caused the deed to be returned, and while there was not a formal application to recuse himself, he would try the case.

Now, I submit that is right. What is wrong about it? He did not own the land; he never did own the land; no member of his family owned it; he had no interest in it whatever. That case was there in his court and witnesses had been summoned there to try it, and, moreover, these lawyers asked him to recuse himself on the ground that he had an interest in it; and, having none, it was his duty to proceed to try the case. It being his duty to try the case, having no interest in it at all, he said that he would proceed with the criminal calendar called, and, as the criminal calendar would be finished that week, the civil cases would come up on the Monday following. The only civil case on the docket was the Florida McGuire case, and they asked on Saturday afternoon for a continuance until Thursday—that is, the attorneys for the plaintiff, Belden, Davis, and Paquet. This was resisted by Mr. Blount, attorney for the defendant. He said that his case had been tried about eleven times and the witnesses all resided within thirty minutes' walk of the court-house; that he had his witnesses ready and he was ready to proceed to trial and that there was no occasion why the jury should be held over until Thursday, when the witnesses were all at hand. Judge Swayne said: "I will not continue the case until Thursday. This matter will go over until Monday morning, when I will try the case unless you can show me good reasons why it should be continued." That is right. He gave them an opportunity to present their reasons why it should not be tried that day. He said, "I will give you a chance to make the proper showing before the judge." That is the procedure in the courts of our land every day.

Judge Belden, Davis, and Paquet that evening went into a grocery store owned by one of the complainants. They talked the matter over. They conceived the idea of commencing a suit in the State court to eject Judge Swayne from this property, in which he had told them that he had no interest. The records of that county at that time show that the Pensacola Improvement Company owned this land. It did not stand in his name, and if it was ever owned by anybody it was by Lydia Swayne, and not Judge Swayne. They did not sue Lydia Swayne, but the judge. They claimed that they had been damaged in the sum of $1,000, and prayed for a judgment in that amount. They went to the office of the clerk about 8 o'clock at night and persuaded him to go and commence suit. They went to the office of the sheriff, but the sheriff demurred against serving the papers. They informed him that they must be served at all

hazards that night. Then they prepared a statement—wrote it themselves—and rushed to the printing office, and next day it was proclaimed in big scare lines that suit had been commenced against Judge Swayne. Why did they commence the action so hurriedly? Why did not they wait until Monday? The question was asked them, and they said they were afraid that the judge would get out of the territory. Why should he leave before his docket was cleaned up? What reason had he to make his escape? Why this unseemly haste, in the dead hours of the night, if these attorneys were acting in good faith as officers of the court? The prosecution have tried to excuse Davis by saying that he was not a party to the suit pending before Judge Swayne. The evidence showed that he was. He joined in the letter requesting Judge Swayne to recuse himself. Mr. Belden said that he was one of the attorneys and Judge Paquet said the same. They were all attorneys of Judge Swayne's court. They were representing clients who had business pending before that court. They ought to have had proper respect for it, instead of commencing a suit against the judge for the purpose of forcing him to recuse himself and calling in another judge to try the case. They commenced a suit that they never had any right to start and no just grounds upon which to base it. No papers were served upon the judge or any further action taken; and now it is seriously urged that the judge, after this reprehensible conduct on their part, after they claimed that he was trying or insisting upon trying a case in which he had an interest, and after maliciously publishing this fact to the world, that he had no right to bring these men before the court to answer for contempt.

These lawyers were officers of the court, and the laws of the United States provide that when an officer of the court is guilty of misbehavior he may be punished for contempt. A statement was made setting forth all of these facts, and these lawyers were cited to appear and show cause why they should not be punished for contempt. They never sought to purge the contempt. But they defended their position as right and tried to defy the court. After all the evidence had been heard and the facts had been brought to the court's knowledge, and they had been permitted to make their answer, the court found them guilty of contempt. I think it was quite right for him to do so, and not wrong and unlawful. It was within the pale of the law. And because he did this, this honorable body is asked to impeach him. Is not a judge of this land allowed to maintain the integrity of his court, to see that its orders are obeyed, and that no action is taken by its officers which brings the court into disrepute? Has he not a right to say that it is the duty of these officers to help to maintain the peace, good order, and dignity of the court and to see that they do so? If he did not do so, but permitted attorneys to disobey the court's orders, to make motions and commence actions that would have a tendency to bring discredit upon it, how long would it be before the court would cease to have the confidence of the people? How long would its decrees and judgments be respected and what officer could enforce them?

These attorneys only had one object in view, and that was to force Judge Swayne, by bringing against him a fictitious suit, out of the case, and there can be no doubt that when an attorney brings unfounded proceedings against a judge for this purpose solely, as these attorneys did, that he is guilty of contempt and should be punished therefor.

Judge Paquet fled, went back to New Orleans, and returned later on. He knew what had been done. He did not defy the judge upon his return. They say the judge is arbitrary and unjust in his judicial conduct. See what he did to Paquet, one of the instigators of the suit commenced against him, when he returned to Pensacola. Paquet filed the following statement:

> Now comes Louis P. Paquet, respondent in the above-entitled matter, and says:
>
> That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.
>
> LOUIS P. PAQUET, *Respondent.*

Did Judge Swayne, after this man came forward and made this frank apology, find him guilty of contempt? Did he show any undue arbitrary power? Did he show that he was a man unfit to sit as a judge? He excused him with a reprimand for what he did, and the proceedings were dismissed. There is no judge in the country who could have acted more honorably than that, and I have no doubt, had these other gentlemen followed the same course and presented the matter as Paquet did, that they, too, would have been excused in the same way.

There is another case, that of O'Neal, which the prosecution claims is a most serious offense, one which shows that this man is an unsafe judge to administer justice in the courts of this land.

What are the facts? A man by the name of Scarritt Moreno was forced into insolvency. After a trustee had been appointed by the court it came to his attention that a certain deed standing in Moreno's wife's name was property that belonged to the estate, and that a certain bank in Florida held a mortgage on the property with the full knowledge of the facts. An action was commenced against Mrs. Moreno, the bank, and other parties for the purpose of declaring the property to be that of the bankrupt and bringing the same into court to be distributed to the creditors. The trustee who brought the suit was acting as an officer of the court, he was acting under the authority of the court, and he was discharging the duties which the law imposed upon him when he commenced this action.

The action was commenced Saturday afternoon. Monday morning Mr. O'Neal, the president of the bank, coming by, saw Greenhut, the trustee, and a conversation commenced between them. They went inside of Greenhut's office, where the books were kept and where the business of the bankrupt estate was transacted. O'Neal says he went in there for the purpose of reproaching Greenhut for bringing this action. What took place inside nobody saw but themselves. Mr. Greenhut, after he was able to do so, filed an affidavit that this man came in there and abused him because of the suit that he had commenced, and during the controversy he drew a knife from his pocket and cut him through his ear, across his cheek to the corner of his mouth, and stabbed him in the body three times. When Mr. Greenhut was able to make affidavit to these facts, he did so, and the matter was brought to the attention of Judge Swayne. Here was an influential citizen of Pensacola, a man who was president of a leading bank there, a man that the people should have respected, and who must have held considerable power; but Judge Swayne investigated the matter. He called witnesses. The parties were sworn. He tried the matter and found just what Mr. O'Neal said that he did; that is, that he went there to reproach Greenhut for commencing this action, and because he did so and to punish him for so doing he stabbed him in the manner just stated.

Mr. PALMER. Will you not be good enough and fair enough to state that the reason why he reproached Greenhut was that the testimony showed that Mr. Greenhut was one of the directors of the bank of which O'Neal was president, and that he was present and knew that the bank loaned this money on this property; that it was a fair transaction and bona fide throughout; that the bank had sold the mortgage to others and had got the money for it? Will you not state that that was what O'Neal complained to Greenhut about, and that he brought this suit knowing these facts, and that he was a liar, a scoundrel, and a perjurer when he did so?

Mr. GILLETT of California. That may be, but it is denied.

Mr. PALMER. It is not denied at all.

Mr. GILLETT of California. Greenhut was acting as an officer of the court in bringing this suit. He had reason to bring that suit, and O'Neal had no reason to come in there and assault him with a knife because he did bring it. He was not assaulting Mr. Greenhut as an individual alone, but he went in there and tried to commit murder upon an officer of the court who was discharging his duty, and O'Neal had no excuse for so doing. Why, if a man can bring up matters of this kind and excuse his conduct, all any man has got to do when he is brought before the court is to bring up personalities and use them as a basis to excuse himself for interfering with the orders of the court and trying to kill its officers.

Mr. POWERS of Massachusetts. I would like to ask the gentleman a single question.

Mr. GILLETT of California. Very well.

Mr. POWERS of Massachusetts. I notice there is printed in the majority report, on page 20, a statute regulating the punishment for contempt of court.

Mr. GILLETT of California. Yes.

Mr. POWERS of Massachusetts. I would like to have the gentleman explain under what provision of that statute Judge Swayne was justified in imposing the sentence of contempt, which he did impose, upon O'Neal.

Mr. GILLETT of California. I have not the report before me. O'Neal was interfering, as I understand it, with an officer of the court, and it was just as much contempt of court as if he had been in the presence of the court when he made the assault upon Greenhut. That is the reason why.

Mr. POWERS of Massachusetts. I would like to ask the gentleman if he understands that the suit brought by Greenhut was brought under any express order of the court?

Mr. GILLETT of California. The suit was brought, under his

duty as an officer of the court, in order to get the assets that belonged to the bankrupt, so that the same might be distributed by the court to the creditors. If he had no right to bring it under the law, he had no right to bring it at all.

Mr. POWERS of Massachusetts. He was bringing it under his general authority as trustee?

Mr. GILLETT of California. Yes.

Mr. POWERS of Massachusetts. Suppose a lawyer who is an officer of the court brings a suit in his own name against another lawyer, and the other lawyer defends the suit, and a quarrel takes place between them and one assaults the other. Do you think that would be, under the statute to which I called your attention, a contempt which would be punishable by fine or imprisonment, one or the other?

Mr. GILLETT of California. That is not a parallel case.

Mr. POWERS of Massachusetts. Why not?

Mr. GILLETT of California. For this reason: One is an individual matter between the parties. Here was an officer bringing the suit as trustee, whose duty it was to see that the assets were brought into court for the benefit of the creditors. He brought the suit as an officer of the court. He represented the court, and any interference with him in the discharge of his *official duty was a* contempt of court from whence his authority came.

Mr. POWERS of Massachusetts. Are not all officers of the court entitled to the protection of the court under your theory?

Mr. GILLETT of California. If the judge of a court appoints a lawyer to bring a suit and the judge had the right to make the order he would then be an officer of the court. Lawyers all stand as officers of the court before which they practice. In the case the gentleman put, the lawyer was not bringing the suit as an officer of the court; he was bringing it on his own account. Here the statute imposed upon this man the duty of bringing the suit. He looked, as he had the right, to the court for protection, and a murderous assault was made upon him; and because Judge Swayne had the courage to hold that this man, one of the foremost citizens, had committed a murderous assault upon an officer of his court and found him guilty of contempt you want to impeach him.

Mr. POWERS of Massachusetts. It appears in the evidence that this suit was a fraudulent suit and a groundless suit. Was he justified by this order to bring such a suit?

Mr. GILLETT of California. It does not appear that that was so, but it makes no difference if it was. The suit was brought and was pending before that court. The court was not to inquire into the merits of the action or why the trustee started it. It was a proper suit on the records, and the officer of the court was entitled to protection of that court, which they justly gave him. This matter has been before the courts of the land. Judge Swayne's conduct was upheld. It is held that he had jurisdiction, and that he did inquire into it. It seems to me all the way through this matter there has been a great deal of bad blood, a great deal of ill feeling, and a considerable amount of persecution. This man O'Neal went before the Florida legislature and employed lawyers to go there and spend large sums of money to lobby through a resolution upon which these proceedings are based. There has been a lot of bitter feeling from start to finish while Judge Swayne has been trying to discharge his duties, and I think he has discharged them to the best of his ability; that he did so fearlessly and conscientiously, and that his acts are justified by law.

Now, in relation to the Hoskins matter, I have this to say.

Mr. ALEXANDER. Before the gentleman enters upon that, will he not speak of the appeal which was made from the contempt decision?

Mr. LITTLEFIELD. And sustained by the court above.

Mr. GILLETT of California. Well, Mr. Speaker, I might say that these matters went on. First, it went on writ of certiorari to the Supreme Court of the United States, and it was dismissed there. They came back and brought it up again on habeas corpus proceedings before the circuit judges. I have been trying to find what was said there in relation to it. Now, in answer to the gentleman's position I desire to call the attention of the House to the case reported in 125 Federal Reporter, page 967, where O'Neal had this matter before that court after he had been found guilty of contempt. This is the language of the court:

> The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders, and in that respect, it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.
>
> Under the bankruptcy act of 1889, section 2, the district courts of the United States sitting in bankruptcy are continuously open; and, under section 33, and others of the same act, a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court—to wit, a trustee in bankruptcy—for an account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and if so, was it under the facts proven a contempt of the court whose officer the trustee was. Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction said court was fully authorized to hear and decide and adjudge upon the merits.

Now, Judge Swayne punished O'Neal for contempt, as he had the right to do, and to-day this House is asked to impeach him for doing an act which the courts of this country have said he had a lawful right and the jurisdiction to do. This is the position in which we are here, and it seems to me to be going a long way when we are requested to impeach a judge for a judgment rendered by him when it appears that it has been affirmed by a higher court.

Mr. LITTLEFIELD. That is the answer the court makes to the question of the gentleman from Massachusetts.

Mr. GILLETT of California. And I suppose at the time this was being discussed the same question was asked there as to whether it was a suit well founded. Now, whether a suit is well founded or not can be no defense to a man who tries to justify his conduct in taking a knife and attacking an officer of the court for the purpose of deterring him from the faithful discharge of his duties as such officer. The question is, Did he make the assault? Was it made upon an officer of the court, and was his act intended to intimidate such officer, and would it be likely to do so. Now, if such was the fact, there is no judge or court in this land or world where justice is thoroughly administered who would not punish parties for contempt of court in so doing.

Coming now to the Hoskins case: An action or proceeding was commenced to force old man Hoskins into bankruptcy. A petition was filed by the creditors. It was not verified. It was demurred to. The demurrer was sustained, because it was not verified, within a few days after the suit had been commenced. The petitioners asked permission for ten days in which to prepare an amended petition. Judge Swayne ought to have granted the request and he did grant it. Any judge in the country would have done so. He gave them ten days in which to amend their petition. Then, in the meantime, before the matter finally came up for hearing, a receiver was appointed, who took charge of the property of the bankrupt. Hoskins had been declared a bankrupt, and the property was in the hands of the United States marshal and was being turned over to the receiver. One Richardson, an old man about 66 years of age, went to the store of Hoskins to take charge of the property. There he discovered a book which contained some of Hoskins's accounts. These accounts were necessary for the court to have, as they showed Hoskins's business dealings and business relations with people in that part of the country. When Mr. Richardson started to take this book away, young Hoskins, in the presence of his father, W. H. Hoskins, made an assault upon him, dragged him from his buggy, and with brass knuckles pounded him into insensibility. The old man was finally gathered up and put into his buggy and driven away and the books were taken from him. Now, then, that matter was before Judge Swayne when he refused to try the case. They wanted to go to trial without these books. They said: "We have witnesses here who will swear that there was nothing in these books at all, and that they belonged to young Hoskins and contained no accounts of the father." The others said that they believed they did contain accounts, because they had seen them. Old man Richardson was on his back because of the bruises that he had received and he could not attend, and he did not get up for some time. Judge Swayne said that he would not proceed to trial until a reasonable time had elapsed in which to procure those books. Mr. Hoskins was there during the trial and he could have brought them in if he wanted to. Now, as a matter of fact, those books never did come into court, and the case was continued until June. It was to be tried in June, and Judge Swayne came in June to try it, and they continued it until the fall, at which time it was settled without trial.

Mr. CRUMPACKER. It was continued by agreement.

Mr. GILLETT of California. By agreement between the parties. It is alleged that Judge Swayne acted arbitrarily. It is alleged that there was a conspiracy to rob old man Hoskins. Now, I care nothing about what the lawyers agreed amongst themselves. I care not how dishonorable they may have been. That fact was not known to Judge Swayne, and the other day the gentleman from Pennsylvania [Mr. PALMER] in the committee room said that Judge Swayne knew nothing about it. I

think there is a statement in this record that proves that. Now, how can Judge Swayne be tried for impeachment when he knew nothing of the conspiracy, if there was one; when he took no part in it, if there was any; when he did not encourage it, and knew nothing about it, and nothing was lost, because this property was turned back to Mr. Hoskins upon his filing a bond? It seems to me this is a most flimsy case upon which to impeach a man. Young Hoskins was then cited to show cause why he should not be found guilty of contempt for assaulting the receiver. I have here the statement of the gentleman from Pennsylvania [Mr. PALMER], made in the committee room:

Mr. PALMER. There is no allegation that Judge Swayne knew anything about this alleged conspiracy between Calhoun and Boone and Tunison at all. There is no testimony of that kind.

And still you want to impeach him for something that he did not know anything about. Is that the way justice is to be administered in this House? Is the greatest body in the world to stand and listen to charges of this kind? That is the report on file here. It is the report that has gone broadcast over this land. Let me call attention to something else that they claim is wrong and of which there is no evidence, and they have abandoned it. They said that Judge Swayne was so corrupt in the management of affairs of bankrupt matters pending before his court that the assets were all frittered away and there was nothing for creditors. We went there and found that 125 bankrupt cases had been commenced in his court. They brought before us the records of five only. We asked them to show us wherein a single wrongful act was done or a claim allowed that ought not to have been allowed, and they abandoned it all; but they published to the world and throughout the world that the bankrupt assets of the northern district of Florida have been robbed through the actions of Judge Swayne, and when we bring them down to it they can not put their finger on a single instance. Besides, the record kept by the Attorney-General of this nation shows that the bankrupt cases in his court are administered much more cheaply than they are in the average courts throughout the United States.

Mr. PALMER. While the gentleman is on that, will he not please state that the record of the Attorney-General's office also shows that there never was a dividend in any bankrupt case in Judge Swayne's court in the world?

Mr. GILLETT of California. That makes no difference. Suppose there are no assets there with which to pay a dividend; are you going to impeach a man on that account?

Mr. PALMER. But is it not a remarkable circumstance that out of a hundred and twenty-five cases there has not been a penny of dividend paid?

Mr. MOON of Pennsylvania. Was not that explained by the fact that the exemption law of Florida allowed each man a thousand dollars and a hundred acres of land?

Mr. GILLETT of California. Now, we find because there have been no dividends paid from bankrupt estates pending in Judge Swayne's court that that is a sufficient reason for impeaching him. This is in line with many other things charged against Judge Swayne as grounds for impeachment, and if it does nothing more, it warns us to be careful in the judgment we pronounce. Now, as to the other things, I would speak of them briefly, and then I have finished.

In the case of the car that Judge Swayne used on his trip from Guyencourt to Jacksonville and on his trip to California, I have nothing to say in favor of that. I do not believe it is good policy for the courts of this land, even though the railroads are in their custody and receivers are appointed to take charge of them, to use the private property of that company, and I do not propose to justify that act at all. I think it should be criticised and frowned down upon so that judges hereafter will not do it, but it does not appear any harm was done. It does not appear any injury was inflicted. It does not appear there was intended any corrupt purpose or that Judge Swayne was corrupted thereby or intended to be corrupted thereby, and it does not show any moral turpitude. I do not think that anybody could possibly vote to impeach him on that ground alone. Had he received the car with the corrupt intention of granting favors for that purpose in matters pending before his court, then he ought to be impeached, but there is no evidence of that kind. It was a private car, used by the company, and when it went over the roads of other companies it was drawn free of charge as a matter of courtesy as is the president's car when drawn over these particular roads.

Mr. RICHARDSON of Alabama. If I understand you in the matter of the car, Judge Swayne did use that car for the benefit of his family and his friends, and it was passed upon by him and the receiver allowed a credit for it. Do you not think that is an impeachable matter?

Mr. GILLETT of California. Credit for what?

Mr. RICHARDSON of Alabama. For the expenses of the car.

Mr. GILLETT of California. He said he bore his own expenses.

Mr. PALMER. Not from Guyencourt.

Mr. RICHARDSON of Alabama. I would like to be informed on that; I would like to know——

Mr. GILLETT of California. It may be and it may not be.

Mr. RICHARDSON of Alabama. Would not that be larceny?

Mr. GILLETT of California. We must take this case as we find it. We find, first, the receiver of this road of his own motion sent to Delaware a private car belonging to the road of which he was receiver and Judge Swayne and his family get in it and ride down to Jacksonville, but there is nothing shown that anything particular is spent on the part of the company—perhaps a little for provisions. But does an offense of that sort involve such turpitude as requiring this House to impeach him? It is not an act I stand for. It is something we ought to condemn, but it has not that gravity, it has not that misbehavior and offense for which we are authorized to impeach.

Mr. RICHARDSON of Alabama. Just one other question for information, nothing else in the world. What does the receiver's account show?

Mr. GILLETT of California. There is no evidence showing anything of this.

Mr. PAYNE. It was stated here this morning that the receiver accounted for the expenses of this trip and the judge passed upon it.

Mr. GILLETT of California. I do not know any evidence of that kind.

Mr. LITTLEFIELD. There is not a thing of that kind in the case.

Mr. PALMER. There is evidence in the testimony of Mr. Axtell, Judge Swayne's lawyer. Now, is it not a fact the expenses of that trip from Jacksonville to Guyencourt were paid by the railroad company? Did not they pay the conductor and the cook?

Mr. GILLETT of California. I did not know there was a conductor on that car.

Mr. PALMER. The conductor was a sworn witness, and if the gentleman had read the testimony he would have known it.

Mr. GILLETT of California. I was not here when the testimony was taken. This thing was brought on us in the dead hours of the night. We received the testimony on Thursday evening, and we were called upon Friday morning to pass upon 230 pages, just like another time when the committee was forced to act without having an opportunity to read the evidence.

Mr. PALMER. You should have been able to read the case. The testimony of the conductor was that he got the car at Jacksonville by order of the receiver—a car provided at the expense of the road—that the car went to Guyencourt and laid over one day and took on Judge Swayne, his wife, and his wife's sister and husband, and went to Jacksonville at the expense of the company, and Judge Swayne also testified those expenses were allowed.

Mr. GILLETT of California. Well, it may have been——

Mr. PALMER. If it was right for him to take two or three hundred dollars, it was right for him to take a thousand dollars.

Mr. GILLETT of California. But the point I make is here: This is a matter that is of a trifling character—well, it is not trifling, but it is a matter of such character that does not warrant impeachment proceedings. While I would not say it was right and would say it was wrong, I do not believe it is of sufficient importance to warrant us to impeach him.

Mr. PALMER. About how much money ought a judge to take out of a bankrupt court before you would impeach him? If you can not for $300, would you do so for $3,000?

Mr. GILLETT of California. There is no evidence that he took any money out.

Now, in reference to this question of expenses.

Mr. LACEY. If the gentleman will permit me a moment. I think that nearly all the House this morning understood the gentleman from Pennsylvania [Mr. PALMER] to make the charge that the receiver not only furnished the car, but also supplied the provisions.

Mr. PALMER. That is what I said, and I say it now.

Mr. LACEY. On page 595 of the record the statement is made that the only thing that was not furnished was a small quantity of liquid that was in the car.

Mr. PALMER. That is the trip to California. I was not talking about that trip. I was talking about the trip from Jacksonville to Guyencourt.

Mr. LACEY. He furnished all the provisions himself——

Mr. PALMER. That is the California trip.

Mr. LACEY. Except liquid provisions.

Mr. CRUMPACKER. Permit me to ask the gentleman from California, is there any evidence in this record showing Judge Swayne requested the receiver to send that special car up there for him at all? I read the evidence through carefully and it seemed to me that it was an act of courtesy and accommodation on the part of the receiver. There is absolutely no evidence showing that Judge Swayne requested the receiver to bring a car to Guyencourt at all.

Mr. GILLETT of California. Here is the evidence on that point:

The only time I ever came to Florida in a private car was in the autumn of 1893, when, at the suggestion of the receiver of the Jacksonville, Tampa and Key West Railroad, Mr. Durkee, the car came to Guyencourt and took myself and family to St. Augustine.

It was at the suggestion of Receiver Durkee.

Mr. CRUMPACKER. So that there is absolutely no evidence showing that the judge requested it, or even knew in advance that the receiver was going to do it.

Mr. GILLETT of California. Let me refer to Mr. Axtell's testimony on page 512. Of course this evidence was rushed in here at the very last moment. It was held back until a few days before this occasion, and Members have not had a fair opportunity to get this evidence and examine it. But Mr. Axtell in his testimony says, "the car was passed without expenses to the receiver or to the railway property." Now, I think I have taken about all the time I care to take up in this matter, Mr. Speaker.

Mr. STEPHENS of Texas. I wish to state that I find the statement published in the Boston Globe was made by the reporter of that paper, and was not an interview of Judge Swayne. I wish to make that correction. The figures he gave were correct.

Mr. GILLETT of California. I never saw the Boston Globe or the reporter either, so I can not say.

Mr. LITTLEFIELD. The gentleman said that Judge Swayne had given an interview. It was simply written by the reporter of the Boston Globe, giving his conclusions, and not a statement of Judge Swayne.

Mr. STEPHENS of Texas. I understood he made the statement in an interview, but it appears the figures were made up by the reporter.

Mr. LITTLEFIELD. And not an interview at all.

Mr. GILLETT of California. I wish gentlemen would allow me to quote a couple of questions and answers on page 512 in relation to the sending of his car—that is, the private car—to Guyencourt, Del.

Q. There has been testimony here of the receiver's car being sent for Judge Swayne and his family to Delaware. Was that while Mr. Durkee was receiver?—A. Yes, sir.
Q. Was it within your knowledge at the time?—A. It was.
Q. Do you know at whose instance it was sent?—A. The receiver sent it at his own instance.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. GILLETT of California. I ask unanimous consent for fifteen minutes longer.

Mr. CRUMPACKER. Mr. Speaker, I ask unanimous consent that the gentleman may be permitted to conclude his remarks.

The SPEAKER pro tempore. The gentleman from Indiana asks unanimous consent that the gentleman from California may be permitted to conclude his remarks. Is there objection?

There was no objection.

Mr. GILLETT of California. There is one more point that I want briefly to mention, and that is in relation to the last charge that is made, on which it is asked that Judge Swayne *shall be impeached*, namely, the receiving of sums of money for expenses in excess of what his reasonable expenses were, and that upon his written certificate.

The testimony taken since Congress adjourned discloses the fact, which has not been referred to either in the resolution passed by the House on December 10, 1903, referring the matter of the impeachment of Judge Swayne to the Committee on the Judiciary, or in the specifications furnished the committee by the gentleman from Florida [Mr. LAMAR], which commands attention.

Under an act of Congress approved June 30, 1896, district judges directed to hold court outside of their districts were entitled to receive sums not to exceed $10 per day, to be paid on their written certificates, for reasonable expenses for travel and attendance upon court outside of their districts. This has continued to be the law up to the present time.

On March 3, 1891, an act was passed providing that a justice or judge attending the circuit court of appeals "shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed $10 a day." It is charged that Judge Swayne, at stated times between May, 1895, and March, 1903, when holding court outside of his district, filed a certificate for his expenses at the rate of $10 per day and collected the same when his reasonable expenses were less than $10 per day. There is no evidence in the record showing what his reasonable expenses were, it only appearing what his hotel expenses were; but it is fair to presume that in most instances they were less than the amount above named.

This charge, unless explained away and excused by some justifying circumstances, is a serious one. If this money was collected by Judge Swayne with a wrongful intent, fully believing and knowing that he had no lawful right to the same and that its collection was unauthorized, then he can not be excused for so doing, while on the other hand, if it was collected with the honest and well-founded belief that it was the intention of the law to allow him $10 a day for expenses while absent from his district attending court, independent of the amount which he actually expended, and that this was the generally accepted construction of the law placed upon the statute by many of the district and circuit judges, of which fact he knew, and that they are, at least a large majority of them, so believing, filed their certificates for $10 a day irrespective of their reasonable expenses, then this is a fact which ought to be taken into consideration.

Now, in this particular instance, while there may be some doubt as to the construction of the law, and my mind is not yet fully decided upon it, it appeared that Judge Swayne asked the committee to permit him to show what the usual practice was, to allow him to go into this mater, but that he was refused that right. As far as we know there are no extenuating circumstances at all. He had no chance to put on witnesses to prove that fact. It seems to me that this is something worthy of consideration, something that we should think over carefully before we act.

If it is true that since 1891, when the law was changed, itemized statements have no longer been received or required, and judges do not make them out, that this Government has recognized this practice, and with a full knowledge of these certificates for eight years have paid them, then it might be said that the Government itself construes this in the same way in which Judge Swayne himself might have construed it. It may be a judicial construction placed upon it, not only by the judges, but by the Treasury Department month in and month out allowing these bills for $10 a day. This seems to me to be the only vital question for us to pass upon. This seems to me the only one worthy of consideration, and I ask and hope that before we pass upon it we will give it careful thought and careful consideration. Nobody wants to see any wrong done. We do not care to put ourselves in a position that will be unjust to others. We ought to maintain, though, the law of the land and do our duty, but we ought to do it fairly and honestly and fearlessly, and that, too, after we have had ample time carefully to read the law and the evidence in relation to the facts before us.

Mr. Speaker, if I have any further time I reserve it for those in the minority.

Mr. JENKINS. Mr. Speaker, will my colleague yield for a question?

The SPEAKER pro tempore. Does the gentleman from California yield to the gentleman from Wisconsin?

Mr. GILLETT of California. Yes.

Mr. JENKINS. I understood you to criticise the committee for excluding evidence as to the practice of other judges.

Mr. GILLETT of California. No; I said that he asked to do it, and it was refused; and that he had no opportunity to do it.

Mr. JENKINS. Well, now, allow me to ask you if you did not sign this statement:

Evidence as to the alleged practice of other judges in this respect was offered and excluded, and, we think, properly.

Mr. GILLETT of California. Yes; I signed that.

Mr. JENKINS (reading):

It would have been competent for him, when a witness in his own behalf, to have stated why he made those certificates.

Mr. GILLETT of California. Yes.

Mr. JENKINS (reading)—

As a witness, he answered and explained every other charge.

Mr. GILLETT of California. Yes.

Mr. JENKINS (reading)—

This charge he made no effort, as a witness, to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true, and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands. Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense had been made out.

Mr. GILLETT of California. I said that. All I say is this,

while that might be our individual opinion, when he asked that, he was not permitted to show it. That is what I say. It was excluded. We have before us the vote in relation to it.

Mr. JENKINS. One more question. What difference does it make as to what other judges were doing when the proof shows that in two separate cases he never expended for his reasonable expenses but one dollar and a quarter a day, and then certified to the Government of the United States that he had expended $10 per day? I want to ask my colleague this question: Was there any evidence from anybody showing that any other judge had been guilty of such corrupt practice?

Mr. GILLETT of California. No; there was not.

Mr. JENKINS. The only evidence that they brought before us was that the other judges had certified that the reasonable expenses were $10 a day.

Mr. GILLETT of California. Will the gentleman show me any evidence that shows that Judge Swayne's expenses were only a dollar and a quarter a day?

Mr. JENKINS. But the gentleman from California has not answered my question.

Mr. GILLETT of California. I am answering your question by asking another.

Mr. JENKINS. What is the question?

Mr. GILLETT of California. I ask you if you know of any evidence in this case, fairly before us, that shows that Judge Swayne only expended one dollar and a quarter a day?

Mr. JENKINS. There is the evidence against him. There is his own statement. There is the evidence in three cases.

Mr. GILLETT of California. That does not prove that was his expenditure in all cases.

Mr. JENKINS. He had an opportunity to explain it. The point I am making is this: Was there any evidence offered to show that any other judge had certified that he had expended $10 when the contrary was the fact?

Mr. GILLETT of California. Senator Higgins made a request like this, and I want to read it. Now, this took place at the hearing, and I ask to have it go in as a part of my statement. It is on page 433 of the hearing:

Q. The accounts of all the judges pass through your division of the United States Treasury Department?—A. Yes, sir.
Q. And as the chief of that division you have supervision, and it is your duty to inspect all of them?—A. Yes, sir.
Q. I observe here that the charge as certified by Judge Swayne for any particular number of days seems to be at the rate of $10 a day?—A. Yes, sir.
Q. Is that usual?
Mr. PALMER. I do not think that is of any consequence. You need not answer that question. We are not trying any judge except Judge Swayne.
Mr. HIGGINS. The point that I make, if the committee pleases, is that the action of the several and respective judges of the courts of the United States are practically a judicial interpretation of the statute—as to what it means—and that if the judges are informed to furnish the certificates at the rate of $10 a day it is their interpretation of its being proper and right under the statute.

Later on he says, on page 434:

Mr. HIGGINS. Before passing from that one consideration I would say a word as to the character of this inquiry and in respect to the tribunal. Of course the committee is gathering evidence for Congress. It is not itself a final court to pass upon the matter. And I submit that there might be a desire upon the part of many Members of Congress, and possibly a majority to have an answer to the question I put before, as to the course of the judges in the United States, and as to their passing upon the merits of this case, and in view of the latitude that has been allowed up to this time, that there is no reason why that should be excluded.

Mr. GILLETT of Massachusetts. Will the gentleman allow me a question?

Mr. GILLETT of California. Certainly.

Mr. GILLETT of Massachusetts. If we as individuals know that 75 per cent of the judges of the United States file just such statements as this—that their expenses are $10 a day—would it not be a fair inference to conclude that they did not spend $10 a day, but sent in the net sum of $10 a day, and that Judge Swayne was sending in exactly the same kind of a return that 75 per cent of the judges of the United States courts did?

Mr. GILLETT of California. I think that would be a fair inference.

Mr. MANN. Will the gentleman from California yield to me for a question?

Mr. GILLETT of California. Certainly.

Mr. MANN. Will the gentleman tell us whether he is in favor of the resolution or not? [Laughter.]

Mr. GILLETT of California. As far as the matter stands on this record, I signed a report the other day that upon this matter I thought an impeachable offense had been committed. But I am bringing this matter before the Members of Congress. I may vote differently than some other Member, I may vote differently from what you do, but I am discussing this state of facts as I understand them.

Mr. MANN. Well, the gentleman is a member of the Committee on the Judiciary and has given great attention to this matter, and I have great confidence in him. He has made a report one way and a speech the other. [Laughter.]

Mr. GILLETT of California. No; I beg the gentleman's pardon, I am simply speaking of these circumstances and the inferences that might be drawn from them, what was attempting to be done.

Mr. MANN. Now, I beg the gentleman's pardon, he has made a report one way and a speech the other. I have great confidence in the gentleman's ability, and I would like to know, if the gentleman is willing to tell the House what his opinion is, whether this resolution should pass or not.

Mr. GILLETT of California. When the roll is called, the gentleman from California will tell the gentleman from Illinois how he will vote.

Mr. MANN. Well, I will pay attention to the roll call and vote after the gentleman.

Mr. GILLETT of California. If the gentleman does so, he will vote correctly, and I hope he will. [Laughter.]

Mr. HENRY of Texas. Mr. Speaker, the impeachment of a Federal judge is a most serious and solemn undertaking. Entertaining this view, I have cautiously and deliberately investigated the evidence and the law from the inauguration of the accusations against Judge Charles Swayne. Remembering that he has been an honored member of the Federal judiciary for many years and that he is now frosted and gray with the weight of sixty-eight winters on his head, is another cogent reason claiming my most deliberate action. The question will now recur upon the adoption of the resolution to impeach Judge Charles Swayne, which is stated as follows:

Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached for high misdemeanor.

The gentleman from California [Mr. GILLETT] has made an argument opposing all the substantial charges against Charles Swayne by the majority of the Committee on the Judiciary, and he maintains that there is now only one impeachable accusation that can be sustained by the House. He maintains that the charges in reference to the accounts of Judge Swayne while holding court out of his district and in other States is the only charge left upon which a conviction can be had. If this case should be sent to the Senate without the substantial specifications upon which the majority of the Judiciary Committee deliberated for months, there would be an entire omission of the acts and misdeeds of the judge which clearly show his misbehavior and tyranny. Hence this House should vote in favor of the resolution impeaching him, carrying with it all the charges upon which the majority of the committee agree, in order that the Senate may take the evidence upon all such accusations and investigate every one of them and not base this case upon one isolated charge.

Mr. Speaker, it is not my purpose to discuss all the accusations embraced in the majority report. Only three propositions shall claim my attention during this discussion. The three points to which my argument shall be directed are: First, the nonresidence of Judge Swayne in the district for which he was appointed; second, his imprisonment of the two attorneys, Simeon Belden and E. T. Davis, for a supposed contempt of his court; third, the matter of the alleged fraudulent accounts and certificates of Judge Swayne against the United States, made while holding court out of his district. None of the other accusations reported upon by the majority of the committee shall be waived by me.

The first specification reads:

Specification 1.—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for ten years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware. That he never pretended to reside in Florida until May, 1903. That during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters and other matters arising between the terms of court needing disposition.

Mr. Speaker, for what offense may a Federal judge be impeached? During the fifty-seven impeachment trials in Great Britain, and the seven cases of impeachment before the Senate of the United States, there has been an overwhelming current of decision and opinion that a judge may be convicted and removed from office for misconduct and misbehavior, whether he has committed an indictable or criminal offense or not. The authorities are everywhere sustaining such proposition. Mr. Lawrence, a noted authority on this subject, states the law as follows:

Whatever crimes and misdemeanors were the subjects of impeachment in England prior to the adoption of our Constitution, and as un-

derstood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

Again, the same author holds:

The authorities are abundant to show that the phrase "high crimes and misdemeanors," as used in the British and our Constitution, are not limited to crimes defined by statute or as recognized at common law.

Again, he most happily states the law relative to the impeachment of Federal judges in this wise:

The Constitution contains inherent evidence, therefore, that as to judges they should be impeachable when their behavior was not good, and the Senate are made the exclusive judges of what is bad behavior.

Mr. Curtis, in his History of the Constitution, lucidly states the true doctrine, as follows:

But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has from immorality or imbecility or maladministration become unfit to exercise the office.

Mr. Story, one of the strongest of American law writers, in his Commentaries on the Constitution, with convincing logic maintains the same doctrine. It is not amiss to quote from this high authority. He thus pertinently states the proposition:

And however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute book of the Union as impeachable high crimes and misdemeanors.

Mr. Rawle sustains Mr. Story in his statement of the law. In one brief sentence he recites the correct principle, as follows:

Neither in Congress nor in any State has any statute been proposed to define impeachable crimes; so uniform has been the opinion that none was necessary, even in those States, few in number, where common-law crimes do not exist.

So, Mr. Speaker, I maintain that it is not necessary for an impeachable act to be one which violates a positive law. There are various misdemeanors violating duties of office and official oath which shock the moral sense of men, and yet they may contravene no known or positive law of the land.

So I assert that if a Federal judge should persist in acting a buffoon or clown, unbecoming his dignity upon the bench, or should persistently refuse to hold the regular terms of his court, or should insist upon receiving the verdict of six men as that of a jury of twelve, he would be guilty of misbehavior in office and impeachable, although he violates no law or positive criminal statute. Hence I say to this House that the overwhelming line of decision and precedent in impeachment trials in the United States and Great Britain has conclusively settled the proposition that a Federal judge or official may be impeached for misbehavior, although he has committed no criminal or indictable offense. In one of the latest works on the Constitution of the United States these propositions are steadfastly maintained and upheld by Mr. Roger Foster. He exhausts the subject and leaves the points stated above unanswerable and unanswered. Hence it is here asserted that the words "high crimes and misdemeanors," for which we are impeaching Judge Swayne, have the same import as the words "misconduct and maladministration" as the same are employed by the constitution of Great Britain in its description of impeachable offenses, and are only subject to the limitations of State and Federal constitutions.

Research of the thousands of pages in law books and legislative precedent clearly sustains my position. And again, it is undoubtedly true that the term "misdemeanor" covers every act of misbehavior in a Federal judge. Indeed, this very point was argued and decided in the impeachment trials of Judge Addison and Judge Chase. Recur to Article I, section 3, of the Constitution of the United States. It reads:

The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services compensation, which shall not be diminished during their continuance in office.

The express verbiage of the Constitution prescribes that the Federal judiciary shall hold their offices during good behavior, and when such good behavior ceases the judges shall forfeit their high and responsible offices. The judiciary should remain forever in this Republic as a city of refuge for the high and the low, for the strong and the weak, for the greatest and the humblest citizen of the land. Every patriot should yearn for the independence, glory, and justice of the judiciary. In the truest and best analysis of government it should be and remain for all time the palladium of American liberty. So long as the judiciary of this Republic is pure, untarnished by corruption, and free from tyranny it will be a potent factor to perpetuate our institutions and the best Government yet devised by men. So let this House hold all Federal judges to a strict accountability, requiring them to look to the written laws of this land as the north star of our destiny.

Keeping steadfastly in mind the gravity and solemnity of this occasion, permit me truthfully and faithfully to recite substantially the evidence on some of the salient points involved in this case. These facts we do know: That Judge Swayne was a resident of Florida in 1885; that shortly afterwards his office was burned in Sanford, Fla., and he removed to the county seat of the same county. We furthermore know that in 1889 he was appointed by the President of the United States to the position of district judge of the northern district of Florida, and that in 1890 he took the oath of office, after his appointment had been confirmed by the Senate of the United States and duly qualified as judge of such district. We know that in 1895 Congress changed the lines of the northern district of Florida and left Judge Swayne residing in St. Augustine. It then became his duty to remove from St. Augustine into the northern district, for which he was appointed judge.

The gentleman from California [Mr. GILLETT] contends that a judge holding office during good behavior is presumed to reside in the district for which he is appointed. Such proposition can not be sustained by any good authority as law. If so, it would not have been necessary or appropriate for Congress to pass the statute requiring residence in the district. Let me call attention of the gentlemen of the House to the specific language of the statute. I shall endeavor, by evidence, to clearly demonstrate that Judge Swayne has never been a resident of the present district for which he was appointed. The Federal statute reads:

A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

He is required to reside in the district, and if he is not a bona fide resident of that district he is subject to impeachment and removal from office. In the beginning of this investigation, permit me to say, all my predilections and sympathies were in favor of Judge Swayne. My respect for the judiciary of my country is unbounded, and I was slow to come to the conclusion that this judge had been guilty of misconduct. But what has the unimpeached evidence disclosed? Appointed in 1890 to serve as Federal judge in the northern district of Florida, it is undeniably plain that he flagrantly and defiantly violated the above statutes down to the year 1903; and any gentleman may take the record, read it from beginning to end, and it will convince him that Judge Swayne has never been an inhabitant or resident of that district of Florida. The unvarying testimony is not controverted by a single witness that Judge Swayne would proceed to Florida from Delaware or some other State, hold his court about thirty days, and immediately upon adjournment "rise and fly" to Guyencourt, Del., or elsewhere.

Mr. WM. ALDEN SMITH. It is your contention that Judge Swayne never acquired any legal residence in this judicial district of Florida?

Mr. HENRY of Texas. It certainly is my contention that he never acquired a legal residence in this judicial district. When they took St. Augustine out of his district, instead of removing into the district, as the law required him to do, he said:

After consultation with my friends in Jacksonville and vicinity they urged me not to remove my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form.

Mr. GILBERT. When was the boundary changed?

Mr. HENRY of Texas. In 1895 the boundary was changed, and Judge Swayne failed to remove from St. Augustine to Pensacola or any other city in the district.

Mr. RICHARDSON of Alabama. Mr. Speaker, will the gentleman allow me to ask a question?

Mr. HENRY of Texas. I yield for a while, but I have not much time at my disposal.

Mr. RICHARDSON of Alabama. Is it not the contention that he did not have any residence in the district?

Mr. HENRY of Texas. Undoubtedly. You may take this entire record, and reading it you will find that Judge Swayne never moved his family into the district; that he never became a resident of the district, and that he simply held court, completed the term, and hied himself away out of the district. Defiantly he refused to make his residence there. You can take the testimony of his best friends, of the chief witnesses, and they all testify that in every instance the only residence he ever acquired in the district was when he came to hold court, which lasted about thirty days. Then he went elsewhere after court had adjourned.

Take the testimony of one of his good friends, Judge A. C. Blount, from whom he purchased a house in 1903. Judge

Blount was one of his witnesses and perhaps one of his most confidential friends except the lawyer and commissioner, Tunison. Judge Blount said:

When Judge Swayne purchased a house from me in 1903 he had a home in Guyencourt, Del. I learned this from him and others. I have been on pretty friendly terms with Judge Swayne. Have had conversations with him. I heard him talk about his place in Guyencourt. I don't know as he called it home or residence—he called it his place. He spoke about his horses, etc. I don't know whether he considered it his summer home or residence or what.

The testimony of J. E. Wolf, who has been district attorney and assistant United States district attorney in the State of Florida, gives convincing evidence against him. This is the substance of his statement:

I think that it was generally understood that Judge Swayne had a home in Guyencourt, Del., where he resided when he was not required to be in Pensacola or Tallahassee at terms of court. He boarded some with Captain Northup in Pensacola. I think he rented a residence a few months. When terms of court opened in Pensacola Judge Swayne would come, and when they closed he would go away.

Substantially the same evidence is adduced by every witness called before the subcommittee, to wit, that Judge Swayne would come to Pensacola and hold his term of court and immediately leave for some other State and locality. It is true that he did board with Captain Northup in Pensacola while he was actually holding court. It is a fact that in 1901 he moved his furniture into what is called the "Simmons house." His family moved into the house for a brief period of two or three months, when they returned to Delaware. He kept his furniture in such house for some time.

Although he was a judge of the northern district of Florida from 1894 to the present time, he has never undertaken to qualify himself to vote in that district. He knew it to be a fact that in order to vote he must go before the registrar of voters and take an oath to support the Constitution of the United States and the State of Florida. He offers evidence of a feeble effort to qualify himself to vote by saying that he requested some one, not connected with the registrar's office, to see that his name was placed on the list of voters for the county in which Pensacola is situated. The whole record sustains the proposition that Judge Swayne has overridden the statute of the United States requiring his personal residence in the district for which he is to act as judge. This statute was passed to require actual, bona fide residence for the convenience of the inhabitants of the district and the litigants in the court.

As to what constitutes a legal residence I shall not extensively argue, but content myself with stating that the able and exhaustive argument just delivered by the distinguished gentleman from Alabama [Mr. CLAYTON] is most convincing, and demonstrates beyond the peradventure of a doubt that Judge Swayne never acquired a legal residence in the northern district of Florida. In the broadest acceptation of the term, he was only a temporary sojourner, a transient, fleeting inhabitant of the district only while his court was actually occupied transacting the business therein. And on this charge he should be impeached and removed from office. Permit me to substantially recite the testimony of one or two other witnesses.

C. M. Coston, an attorney from Pensacola, states substantially:

I do not suppose that he held court more than a month at any time, say from two to five weeks. * * * His residence here consisted only of the length of time it required for him to come here and hold court and go away.

Capt. W. H. Northup, of Pensacola, testified substantially as follows:

I have heard Judge Swayne speak of his home at Guyencourt.

George P. Wentworth, of Pensacola, testified substantially:

Judge Swayne boarded with Captain Northup at the Escambia Hotel and sometimes stopped with the clerk. * * * He occupied the old Simmons residence. His family came down there while court was being held and went back to his place at Guyencourt, Del. His residence in Pensacola was generally limited to holding terms of court here.

The next proposition I wish to discuss is the one of the alleged contempt in Judge Swayne's court by two attorneys, Simeon Belden and E. T. Davis. Mr. Belden is a former speaker of the house of representatives of the State of Louisiana and was attorney-general of that State, and is a distinguished citizen over 70 years of age. He and Davis were arraigned before Judge Swayne on the charge of contempt solely because the judge imagined his dignity had been offended. He surrounded himself with a blaze of glory and assumed to himself more power and prerogatives than the satraps of old.

In all my researches of tradition and judicial history never have I found evidence so convincing of the tyranny and oppression of a petty, provincial judge, who sets himself up as a veritable dictator and autocrat. Mr. Speaker, we have had seven impeachment trials before the Senate of the United States. In 1803 Judge Pickering was removed from office because he had violated his oath of office and disregarded Federal statutes. He was found guilty of the four charges against him and lost his high office. The next Federal judge impeached by this body was in 1831. Judge Peck, a district judge in the State of Missouri, was arrainged and tried before the United States Senate. His imagined dignity had been offended by an Irish lawyer named Lawless. Lawless was counsel in a case instituted before the judge which had been decided and appealed to the Supreme Court of the United States. The judge had rendered his decision, and some time after the judgment of his court had caused to be printed what he termed his opinion.

Lawless, in a mild and dignified communication in a St. Louis paper, criticised this opinion of the judge. For this published criticism of his opinion, Judge Peck had him brought before him on a charge of contempt, committed him to prison, and disbarred him for eighteen months. Without a trial by jury, disregarding the constitutional rights of every citizen, this judge placed the stigma of a criminal upon this practicing attorney and denied him the right to pursue his profession for eighteen months. In the trial before the United States Senate Mr. Buchanan, who was afterwards President of the United States, was one of the managers on the part of the House. In his argument before the Senate he most ably discussed the law of impeachments and delivered one of the strongest and most luminous legal arguments on that branch of our jurisprudence to be found in the books anywhere.

Mr. Buchanan predicted that it would be many years before another Federal judge would be impeached for thus punishing a citizen for contempt. In this respect his judgment was erroneous. While the impeachment failed in the Senate by a vote of 22 to 21, it was only a few brief years until Federal judges commenced to again harass, imprison, and maltreat citizens and attorneys in their courts. The example furnished by this case was not sufficient to deter judicial tyrants from trampling under their feet the rights of lawyers and citizens. That trial, however, had one salutary effect: It aroused sentiment against the encroachment of the Federal judiciary and inspired a determination to control and restrict them in their powers and jurisdiction. Upon the termination of this trial Congress passed an act setting upon the jurisdiction of Federal judges in contempt cases exact limits. Such has been the law of contempt from that day to this.

Judge Swayne well knew this act of 1831, and if not, he is grossly ignorant of one of the elementary rules that govern his court and should be removed for incompetency and lack of legal knowledge. In that year Congress made a statute on contempts so plain and specific that the wayfaring man, though a fool, might thoroughly understand it. Still Judge Swayne, who has occupied his exalted position upon the Federal bench for fifteen years, blandly pleads that he was ignorant of this statute that has been invoked so often in the United States. If he has not learned his power and jurisdiction within fifteen years, to punish a citizen or a lawyer for contempt without the right of trial by jury, it is high time that this body should call him to task and send this case where appropriate punishment can be administered to him for his acts of injustice, misbehavior, and corrupt conduct.

Mr. Justice Field, in 1873, in delivering the opinion of the Supreme Court of the United States, construed the statute of 1831 and plainly reiterated the law of punishment for contempt before Federal courts. This decision must have been known to Judge Swayne; otherwise his lack of knowledge of the leading case on contempt is a sad commentary on his judicial ability. It is not amiss to quote a few lines from that opinion, as follows:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcements of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831.

The act in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt; but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions; and, third, where there has been resistance or disobedience by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the courts.

As thus seen, the power of these courts in the punishment of con-

tempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to force obedience to their lawful orders, judgments, and processes.

In the act of 1831 it is provided that a judge might fine or imprison for contempt of his court, but under no circumstances, however flagrantly his imagined dignity might be violated, can he fine and imprison. This penalty is provided for in the statute so clearly, and discussed by Mr. Justice Field in the case referred to, that if Judge Swayne was not aware of the statute and decision his career as a jurist for fifteen years has been, indeed, barren and unsuccessful. But in the face of this statute and this decision he flagrantly violated their provisions by fining and committing to prison the two attorneys, Belden and Davis. On the 15th day of February, 1901, there had been filed in his court a case styled "Florida McGuire *v.* The Pensacola City Company."

After the filing of this suit in Judge Swayne's court a rumor became current and general that the Judge had purchased block 91 of the land in controversy. The rumors became so definite that there was left no doubt in the minds of the public and counsel for the plaintiffs that Judge Swayne had purchased a part of the land involved. Whereupon counsel addressed to him a letter at Guyencourt, Del., asking him to recuse himself, because of the fact that he had contracted for or purchased block 91 of this land. Far be it from me to do him an injustice, but let any man intelligently read the record and he must come to the deliberate conclusion that in some way, either by himself or through his wife, he became interested in block 91 after the litigation had been instituted in his court.

The fact is patent from a perusal of the record. Judge Swayne declined to recuse himself, and said in his first statement after reaching Florida and opening court that a "relative" of his had purchased a part of the land in question, and that he had got hold of the deed and returned it to the vendor. In this statement he only referred to the "relative," not saying who the relative was. On the next day, or several days thereafter, in court he called up the counsel for the plaintiff in the McGuire case and said that the relative he had referred to yesterday or the day before was "his wife," and stated that she had paid for the land with funds inherited from the estate of her father in Delaware.

The evidence of his best friend, Judge W. A. Blount, perhaps the foremost lawyer of the State of Florida, is most persuasive and convincing against Judge Swayne. He and Judge Swayne were intimate friends, and Judge Blount was the friend who moved that contempt proceedings be instituted against Belden and Davis. Belden and Davis had simply asked, as they had a right to do, after hearing of the current and well-founded rumors that Judge Swayne had purchased a part of the land in controversy, that he recuse himself and not try the case, because by virtue of his interest, or his wife's interest, in block 91 he was clearly disqualified as a judge. He declined to do so and grew furious and indignant. Let us deal with him justly.

Take the evidence of his good friend, Judge Blount, who defended his outraged dignity and originated the contempt proceedings. He tells us that when Judge Swayne opened court, or a day or so thereafter, counsel for Florida McGuire being in the room, Judge Swayne stated that he had received a letter from some of them asking him to recuse himself, because he had purchased a piece of the land which was a part of the land embraced in the Florida McGuire case; that he had not purchased any such land; that his wife had negotiated for the purchase of a part of this tract, through him, but when the deed was sent to close the trade he saw it was a quitclaim and he asked why a warranty had not been given. The reply by Watson & Co., Edgar's agents, was that the reason a warranty deed was not given was because the land was in controversy in this suit and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and that while there was not a formal application to recuse himself he would try the case.

Never once did Judge Swayne hint that he returned the deeds because the land was in litigation in his court, but because a warranty deed was not given and a quitclaim had been forwarded to him. If a warranty deed had been sent he would have retained it, apparently, although block 91, which he was purchasing, was in litigation in his court. This is the fair and legitimate inference from his statement, his acts, and the evidence of his good friend, Judge W. A. Blount. Belden and Davis had asked him to recuse himself on the trial of the McGuire case. He came from Guyencourt to open the November term of his court in 1901.

When the attorneys for the plaintiff in the case appeared in the court room he called them up and stated that he would not disqualify himself in the case because a relative of his had purchased the land. He held himself not interested, although a relative was interested. He failed and refused to communicate to the counsel for the plaintiff who this relative was on the first day it was mentioned. However, he told them on the 11th of November that the relative was his wife. Why did he not make this announcement at the first and say that his wife had bargained for or purchased block 91, which was in litigation in his court? The merest tyro in the law knows, without the submission of a single argument, that the judge had no right to try the case and that he was clearly disqualified. There is an express statute in the State of Florida to the effect that anything which disqualifies a juror to sit in the case will also disqualify a judge to try it. Judge Swayne knew of this statute, if his ignorance of Federal statutes and decisions did not extend to State statutes and decisions in the State of Florida.

Mr. GILBERT. May I interrupt the gentleman?

The SPEAKER pro tempore. Does the gentleman yield to the gentleman from Kentucky?

Mr. HENRY of Texas. Just for a moment.

Mr. GILBERT. I want to know just how much time intervened from the time he disclosed the fact that it was a relative of his until it came out in the testimony that it was his wife?

Mr. HENRY of Texas. According to several of the witnesses it was from the 5th till the 11th of November, 1901. This relative had purchased the land. The so-called "relative" was his wife, and yet he held that he was qualified to try the case. Was it his "relative," or was it his "wife?" These are pertinent inquiries. No; it was neither.

The testimony shows, and it is in this record, that as a matter of fact he had bought upon credit, and was to give his note and mortgage, and the most significant fact of all is revealed in the letters which Mr. Hooten brought into court, showing that a blank note and mortgage were sent to Judge Swayne for him to fill in the amount of it. In other words, he was purchasing the land at his own price, without any price being named by the vendor. There is evidence to the effect that the Judge purchased block 91 on credit, and that he was to give his notes and a mortgage on the land in payment for the same; but for some reason best known to himself the proceedings for the sale of the land were suddenly terminated, although letters, deeds, notes, and mortgages had been forwarded to and fro between him and the real estate agents in Pensacola who were interested in the land in litigation in the McGuire case.

In spite of all that he would try the case as a "most just judge." Although he stated from the bench that a relative had purchased the land, and later that the relative was his wife, he had returned the deed to the real estate agents not because of the litigation, but solely because it was a quitclaim and not a warranty deed. Still his imaginary dignity is offended when an upright attorney suggests to him his own disqualification, and such attorney is forthwith charged with contempt of his court. Contempt on the part of this attorney would be a mild term; indignation, injustice, and outrage would have been feelings more compatible with a true lawyer's ethics and sentiments. To this distinguished judge no injustice should be done, but I say to you that for this one act alone, as revealed and photographed in this record from beginning to end, his judicial ermine, which he has disgraced, should be stripped from his shoulders. He should be dragged from his high place of power, and an upright and honorable judge should fill his station.

Later on in the trial of this case, when it was subsequently refiled, after the first dismissal, he charged the jury to return a verdict in favor of the title to the land of which he had purchased a part. Such history and such acts on his part are peculiarly significant, and perhaps have a deeper meaning than that revealed on the surface of the record. Judge Swayne avers that he could not tell from the description of the land contained in the pleadings in the Florida McGuire case that block 91 was a part of it. Permit me to call to your notice that this lack of candor of the gentleman on trial here in this statement indicates a glaring lack of fairness on his part. He solemnly states before the subcommittee that the land as sued for by McGuire and others is described as follows in the petition:

> Certain parcel or piece of land known as the Gabriel Rivas plat, containing 263½ acres, more or less, in the eastern portion of the city of Pensacola.

Whereas the pleadings in that case reveal that his statement is not true and that the land is described in it as follows:

> Certain parcel or piece of land known as "the Gabriel Rivas tract," containing 262½ acres, more or less, in the eastern portion of the city of Pensacola, Escambia County, State of Florida, mostly in section 8, township 2 south, range 29 west.

In a matter of detail like this propriety would require that in making his statements before the subcommittee of the Judiciary Committee that he should accurately state what the description was as contained in the original pleadings and not

curtail or change the descriptions given in the papers of the case.

Mr. JAMES. What was the judgment he rendered in this case?

Mr. HENRY of Texas. I will tell you in a moment. Later on, upon the second institution of the suit for the same land, he gave a peremptory charge to the jury to return a verdict in favor of the title of the claimaints against Florida McGuire and others. It appears that he endeavors to mislead the House by stating that he could not understand that it was a part of the Rivas tract, and gave the description in his statement as being bona fide, when it was not a correct description, as found in the original papers filed in the case. What next occurs? Belden and Davis, upon learning of his supposed interest in the land by reason of his purchase, ask him by letter and in person to recuse himself. He declined to do so. On Saturday evening at 5.30 o'clock he announced that on the following Monday he proposed to take up the McGuire case.

His court met at 10 o'clock. The criminal docket was being tried and about to be completed Saturday night. There were fifty or more witnesses in the McGuire case to be summoned for Monday morning. There would be no time to have process issued Monday morning and get the witnesses in court. The Judge knew that and would try the case whether or no, and would not hold himself as being disqualified. Up to this time, Saturday evening at 5.30, E. T. Davis had not been of counsel in the McGuire case. When Judge Swayne made the announcement that he would try the case on Monday morning, Belden and Paquet met and agreed together to bring suit in the State court of Escambia County, Fla., against Judge Swayne for the purpose of trying his title to block 91 of the land in litigation.

They believed, and seemingly had a right to do so, that it was he who had purchased the land and not his wife. At least there was a well-grounded suspicion which caused the attorneys to most seriously question his statements. Saturday evening late Belden and Paquet associated E. T. Davis, an attorney of Florida, with them for the purpose of instituting a suit in the State court against Judge Swayne. These three gentlemen brought the suit in the State court against him for the possession of the land and for rents and mesne profits, amounting to something like a thousand dollars, which is the usual allegation in ejectment cases. On the following Monday morning Davis, who had not been an attorney in the McGuire case, appeared before Judge Swayne and asked for the dismissal of the McGuire case. The order of dismissal was granted by the judge and entered.

Judge Swayne says that he does not contend that counsel had no right to sue him, but complains of the manner in which the suit was brought. If there was any contempt in the institution of this suit it was a contempt of the State court and not of the Federal court, and Judge Swayne had no right or jurisdiction to punish in his court acts committed in another court. He objects to the manner in which they approached the throne and sued the Judge. They would not do as he would will it; they did not come with smiles and bouquets when they instituted the case against him in the State court. They simply charged that he was interested in the land, and they were exercising a constitutional right to sue an interested party, although he occupied the position of Federal judge.

When the McGuire case was dismissed Judge W. A. Blount, one of the most intimate friends of the judge, arose and said that Belden, Davis, and Paquet were guilty of contempt of the court in instituting a suit in the State court of Florida. He filed no affidavit, as the law requires, although the supposed contempt was committed out of the presence of the judge. Belden and Davis were arraigned before Judge Swayne on the charge of contempt and had a brief trial, wherein the judge denounced them and abused them from the bench, and said that their acts "created a stench in the nostrils of the people of Florida." He used epithets, his manner was not temperate, as befits a just judge on such an occasion; but he was acrimonious, violent, vindictive, and tyrannical. He transcended his legitimate powers, spat upon the statutes of the United States and the decisions of the Supreme Court on contempts, and entered a judgment fining, imprisoning, and disbarring two attorneys who had exercised a constitutional privilege.

Upon the suggestion of his amicus curiæ, he remitted the sentence disbarring them from the practice of their profession. He should have known that he could only fine or imprison, yet he imposed the extreme penalty of fine and imprisonment. He oppressed them maliciously and vindictively, according to every fair inference of this record. On habeas corpus Belden and Davis carried their cases before Judge Pardee at New Orleans. The court at New Orleans held that they could not question the jurisdiction of Judge Swayne, but inasmuch as he transcended his power it would hold that he could not fine and imprison them for contempt, and would give Belden and Davis the alternative of either paying the fine or going to prison. In pursuance of the judgment of Judge Pardee, Davis paid the fine and escaped imprisonment. Belden, although he was over 70 years of age, went to jail and served his sentence.

Still Judge Swayne, in his cooler moments, when his conscience should have been aroused and his better feeling as a judge revived, did not recall his unjust and vindictive judgment. He resented the action of the attorneys for asserting a legal right, and punished them strictly as a partisan and not as a judge. The proof is overwhelming that he oppressed them and harassed them as no Federal judge should ever be permitted to do.

There is another contempt case in this record which, it seems to me, makes an impeachable ground against Judge Swayne. He oppressed, punished, and perhaps sent to his death one O'Neal, who happened to fall a victim to his tyranny and wrath, because, forsooth, he had become involved in a difficulty with a trustee in bankruptcy in his court in a matter altogether foreign to the duties of such trustee as an officer of the court. In that case he again showed his malice and spleen and clearly transcended his prerogatives as a judge.

Let me briefly advert to the accounts of Judge Swayne while holding court out of his district. For many months he was detailed to hold court at points in Alabama, Texas, and perhaps other States. While he was thus absent from home holding court, the law provides for his expenses as follows:

> For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts not to exceed $10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

This is the act of Congress of 1896. It is agreed that Judge Swayne made and signed on each and every occasion the certificates required by law before receiving the payment of $10 per day for "reasonable expenses" for holding court out of his district. He never charged less than $10 per day for such expenses, although in Waco, Tyler, and Dallas, Tex., his expenses ranged from $1.25 to $3 per day, and his traveling expenses from Pensacola could not possibly have exceeded $50. His actual expenses were much less than $10 per day, and in every instance he certified the amount of $10 as being his reasonable expenses. Since 1896 he has held court many months outside of his district, and for so doing he has drawn from the Treasury over $7,000, while his actual expenses have not exceeded $3,000. In violation of the statute he has drawn from the Treasury more than $4,000.

For making this false and fraudulent account he should be impeached and removed from office. In Waco, in 1895, he held court thirty days and drew from the Treasury $300, although his actual expenses were much less than that amount. In Dallas, in 1896, he held court forty days and drew from the Treasury $400, although his actual expenses little exceeded $100, if that. In Waco, in 1896, he held court eighteen days and drew from the Treasury $180, although his actual expenses were little more than $1 per day. In Dallas, in 1896, he held court thirty-six days and drew from the Treasury $360, while his reasonable and actual expenses were much less than that amount. In Waco he held court twenty-eight days and drew from the Treasury $280, although his reasonable and actual expenses were little more than $1 per day.

The gentleman from Iowa [Mr. LACEY], in a colloquy to-day, suggested that this $10 allowance was "compensation," but the law denominates it as being "for reasonable expenses." No law of Congress could constitutionally authorize a Federal judge to receive more pay than his legal salary. The Constitution itself expressly provides—

> The judges, both of the Supreme and inferior courts, * * * shall at stated times receive for their services compensation, which shall not be diminished during their continuance in office.

At stated times they must receive their compensation, and it has been fixed by law as their legal salaries. The Constitution does not authorize them to draw this compensation as a salary under the pretext of reasonable expenses.

The Constitution does not permit a Federal judge to secure his salary under statutes providing for expense accounts, but authorizes that the salary shall be fixed by law. Under the law prior to 1896 judges were allowed money for actual expenses, but the act of 1896 was more stringent and requires that they incur only reasonable expenses. Under the old law the expenses might have been unreasonable; now they must be reasonable, and so certified.

Mr. Speaker, I have already detained the House beyond the limit of my time, and in a few moments I shall conclude my remarks. After reading this testimony and hearing some of the

witnesses, I assert that a perusal of the record will convince any unbiased, unprejudiced Member of this House that Judge Charles Swayne should be sent before the high court of impeachment.

Not upon the separate question of his fraudulent accounts, but upon all his wrongful acts as a judge in Florida, which demonstrate that he has been a petty tyrant there, openly defying the people and refusing to make his residence among them. He should be sent before the Senate, in order that they may be able to investigate his acts in the Belden and Davis contempt cases, in the O'Neal case, and in the Hoskins bankrupt case, where he sat on the bench and saw an old man who could not read or write, worth $40,000, owing only $10,000, plundered by a coterie of attorneys. And when the old man appealed to him for a trial, without a suggestion from anyone, he looked down from his place of power and said: "You had better get together in this case." He intended to imply by such suggestion: "Mr. Hoskins, you pay over to these attorneys, Calhoun and Boone, $1,000 each, as blood money, as a fee, and all the costs of bankruptcy proceedings, and then your property will be released."

All these combined acts reveal his perfidious record as a judge. They make plain that he must have known of the corrupt conduct of the attorneys going on under his very eyes. He should go before the Senate of the United States on all these propositions, and then if he had another or a better defense than he has given to the Judiciary Committee, which has reported unanimously against him, if his escutcheon as a judge be unstained, he can clear himself before the Senate and before the American people. [Applause.]

Mr. POWERS of Massachusetts. Mr. Speaker, as the hour is late, it is my purpose to only speak briefly upon this resolution. It appears that the Judiciary Committee have, by a unanimous vote, reported that the respondent, Judge Swayne, has committed an impeachable offense. A majority of that committee have reported that he has, in their opinion, committed several impeachable offenses. For the purpose of the discussion which is now before the House, it seems to me that it is immaterial at the present time to enter at any great length into a discussion of whether all these charges constitute impeachable offenses. The real question which is before this House and upon which we will be called to vote is the question whether the respondent ought to be impeached. The question of whether he shall be impeached upon one or more articles is a question that must be settled at some future day. At the present time the question is whether the resolution of impeachment which has been reported by the majority of this committee shall be adopted. This House has no constitutional power to pass upon the question of the guilt or the inocence of the respondent. He is not on trial before us. We have no right to take from him the presumption of innocence which he enjoys under the law. All we have the right to do is to say whether there has been made out such probable cause of guilt as to entitle the American people to the right to have the case tried before the Senate of the United States. Even if we vote this resolution, we do not take from him the presumption of innocence. He is entitled to enjoy that, so far as any action of ours is concerned. We simply say by voting this resolution that the people are entitled to have this cause tried before the tribunal which under the Constitution is ordained for the purpose of trying cases of this character. We say that and we say no more. There has been a somewhat lengthy discussion today as to whether certain offenses charged here are impeachable offenses. I assume, Mr. Speaker, that we shall have the opportunity to discuss those questions later on. We shall have the opportunity to discuss the question whether the act of Judge Swayne in the Davis and Belden case constitutes an impeachable offense or not. We shall also have the opportunity later on to discuss the question whether the act of the respondent in the O'Neal case constitutes an impeachable offense or not.

Those are questions which can be considered at a future time better than now. I assume, however, that this discussion has taken the broad range that it has in order that this House might be fully acquainted with the evidence which was presented to the committee. Now, the evidence which came before the subcommittee came both from the complainant and the respondent. The evidence that was offered in behalf of the respondent was offered as a mere matter of courtesy and not as a matter of right. We are sitting here, as has already been said, as the grand inquest of the nation. We are exercising the functions of a grand jury, nothing more. We can not pass at this time upon the question of the innocence or guilt of the respondent. All we can do is to ascertain whether or not this cause is worthy of trial before that body which, under the Constitution, has exclusive authority to hear it. In other words, the question is this: Has there been such a case made out; has there been cause shown sufficient to entitle the American people to the trial which the Constitution provides? More than that we are not called upon at the present time to determine. I am of the opinion it is the duty of this House, upon all the evidence, to vote the resolution of impeachment. I reached that conclusion with the greatest reluctance. For nearly thirty years I have enjoyed pleasant and harmonious relations with the members of the judiciary of my circuit and State. No American lawyer can review the long list of distinguished and eminent jurists which Massachusetts has given to the service of the State and the nation without feeling an increasing pride in the profession to which he belongs. I think, Mr. Speaker, we all agree that our bias as lawyers—and the majority of this House are lawyers—is in favor of the judge against whom the accusation has been made. If the path of duty in this particular case was beset with doubt, I would gladly accord the benefit of the doubt to the respondent; but to my mind the path of duty is clear.

The seventeen members of your Judiciary Committee who have studied this question, and studied it with care, have reached the conclusion that the respondent has, at least, committed one impeachable offense. I am aware that rumor has it that this prosecution was instigated by the political enemies of Judge Swayne. I can not believe that well founded. When I voted for the original report I was not advised as to which political party the respondent belonged. I did not then and I do not now consider that question of any importance. Whatever his political views may be they neither injure nor benefit his right of protection. All that I ask, all that Judge Swayne asks, is that if he is to have a trial it is to be a trial upon the evidence, and the evidence before the proper tribunal, and that is all that any American citizen insists upon. If we vote this resolution we simply vote that this case shall go forward to trial. The question of the innocence or the guilt of Judge Swayne is to be determined by another tribunal over which we exercise no influence, and a tribunal that will examine every question and the evidence and reach a just and correct conclusion. I want to say, however, before I sit down just one word with reference to the exercise of that tremendous power known as the power of punishing for contempt. The resolution now before us is a resolution of a most serious and far-reaching character. We shall have an opportunity when we come to discuss the articles upon which the impeachment is to be based to take into consideration to what extent the people have given to the courts the power to protect their dignity and independence. We shall also have an opportunity to determine the rights of the people and the prerogatives of the courts. Now, it is claimed in this particular case that the power which was vested in the office of judge has been abused, and it is claimed that this respondent has exercised a power beyond that which the law conferred upon his office. To my mind the most serious charges against the respondent are those charges growing out of the O'Neal case and the Belden and Davis case.

I am aware, Mr. Speaker, that there is proof that the respondent, by false certifications, has taken from the Treasury of the United States several thousand dollars which properly did not belong to him. That if it amounts to anything it was the obtaining of money belonging to the people by false pretense. I know that there is evidence here that this respondent made use of property in the custody of his court for his personal convenience and enjoyment at the expense of the creditors of a bankrupt corporation. I think that those two propositions have been proven, but to my mind the most serious proposition is something that does not involve the property rights of the American people or the property rights of any railroad corporations. It strikes deeper than that. It involves the liberty of American citizens [applause], and I shall be surprised when this question is fought out, this evidence is examined, when the question of articles of impeachment comes up, if this House does not reach the conclusion that the most serious charge against the respondent is, first, the O'Neal case and, second, the Belden and Davis case. I say that because to my mind those are the two most serious charges against the respondent. I feel today, and I have felt all the time while this question was under discussion, that there was a misconception upon the part of many lawyers here as to what those cases were.

I do not propose at this time to undertake to discuss the evidence relating to those cases. I want, however, that this House should bear in mind that the power to imprison for contempt is, to say the least, a very dangerous one, never to be exercised except for the best of reasons, and then well within the authority conferred, for the protection of the dignity and the authority of the court. We have conferred that power in the belief that it never would be exercised except for the best of reasons and for the sole purpose of preserving the dignity and the authority of the courts. [Applause.] This question of imprisonment for contempt is one that has been under discussion for years in

this country. What does it mean? It means that any Member of this House or any American citizen can be sent to prison by a member of the judiciary without the safeguard of being tried by a jury of his peers. Now, that is a tremendous power. It is a dangerous power. In my State it never is exercised except for the best of reasons and for the sole purpose of preserving the independence and the dignity of the judiciary.

Now, I say to you, Mr. Speaker, that I believe this House will reach the conclusion that in the O'Neal case and in the case of Belden and Davis that it was exercised in disregard of law. That it was exercised by the judge, who, at the time, breathed forth malice toward his victims and violated a law that was plain and explicit. Before him in the Belden and Davis case was that statute which said he might fine or he might imprison, but he could not both fine and imprison. What did he do? He both fined and imprisoned; disbarred these members of the court for two years, thereby attempting to ruin their reputation and deprive them of the means of earning their living. Yet that statute which he violated was a statute plain and explicit. He knew that it had been construed by the United States Supreme Court—that clause as to whether he could both fine and imprison—yet, in violation of a plain and explicit reading of the statute, disregarding the opinion of the Supreme Court, he fined, imprisoned, and disbarred.

Mr. CRUMPACKER. Will the gentleman permit me to ask him a question?

Mr. POWERS of Massachusetts. Certainly.

Mr. CRUMPACKER. Both Belden and Davis were attorneys in the general practice of law, were they not?

Mr. POWERS of Massachusetts. I understand so—one in Florida and one in Louisiana.

Mr. CRUMPACKER. Did either of these attorneys call attention to the fact that the judge did not have the power both to fine and imprison at that time?

Mr. POWERS of Massachusetts. I do not know that they were in a position to call attention to that fact.

Mr. CRUMPACKER. Did any attorney?

Mr. POWERS of Massachusetts. I do not think they were permitted to do so. I do not think they even called the judge's attention to the fact that he did not have a right to disbar them. The very man who prosecuted them gave his opinion to the judge that he had gone much further than the law permitted him. "Why do you disbar these men? You ought not to do that; but you may fine and imprison them." So far as it appears these two lawyers had been told by the judge that they were a stench to the nostrils of the people; that they were ignorant. They stood, no doubt, dumb. They did not know what sentence might be imposed upon them. He was irritated, apparently full of malice at that time, and they did not ask him what he was going to do. They did not discuss the law.

Mr. LITTLEFIELD. Will the gentleman permit me to interrupt him?

Mr. POWERS of Massachusetts. Certainly.

Mr. LITTLEFIELD. The gentleman said that Judge Swayne said that he knew the law, that he could not fine and imprison, and that he knew the Supreme Court had construed it. Will the gentleman state where this appears in the record?

Mr. POWERS of Massachusetts. I think that is a fair presumption.

Mr. LITTLEFIELD. But you stated it as a fact. If it is, will you point me a place in the record where it appears?

Mr. POWERS of Massachusetts. There is a presumption that every man knows the law.

Mr. LITTLEFIELD. And that is the basis of your statement?

Mr. POWERS of Massachusetts. And I believe that a member of the judiciary must be presumed to know the law.

Mr. LITTLEFIELD. Is that all the foundation you have for the statement of fact that you have made, as going to prove the knowledge of the man?

Mr. POWERS of Massachusetts. I do not think I said that. I said he was bound to know.

Mr. LITTLEFIELD. You said that he did know.

Mr. POWERS of Massachusetts. If I stated he did not know I would charge him with ignorance, and I am not permitted to charge Judge Swayne with ignorance, because I know that he is a very capable judge, so far as legal attainments are concerned.

Mr. LITTLEFIELD. You charge him with ignorance of an opinion, and make an assertion of fact that is not sustained by the record.

Mr. POWERS of Massachusetts. I presume the court must have known of the existence of such a statute and must have known of the construction of that statute by the Supreme Court; certainly he was presumed to know. Every man is supposed to know what the law is, and he was presumed to know it when he was about to violate a statute which had been construed by the Supreme Court.

But I have already taken, perhaps, all the time I ought to take in this discussion.

I believe it to be the duty of this House, when these articles of impeachment come before it, to examine the evidence carefully, and to reach the conclusion as to all the articles upon which the respondent ought to be impeached. I had rather, so far as I am concerned, see the impeachment go forward upon the broad ground that he has abused his power, as I believe he has. Why, to my mind, we might forgive him if he had stolen five or six thousand dollars of the money belonging to the American people; but I am never ready to forgive any judge who has willfully taken from the American people the liberty which the Constitution guarantees. [Applause.] And I believe that we shall reach the conclusion that this is a case that ought to go forward for trial. That is the only question before us. If we believe there is probable cause, and that the people ought to have an opportunity to have this case tried, then it becomes our duty to send it forward for trial before the proper tribunal. [Applause.]

Mr. LITTLEFIELD. Mr. Speaker, I do not know that I quite agree with my distinguished friend as to the circumstances under which this House should vote to sustain the resolution pending before it. I do not think it is a question altogether of probable cause. I agree, however, that it is a matter that addresses itself to every man's conscience and judgment, and he should exercise them here independently, fairly, and honestly.

Now, so far as I am concerned, I can not vote for any specification or any charge unless, in my judgment, the Senate of the United States, upon the record as it stands here before us, would be required in honor and in conscience to find the charge sustained. That may be too drastic a rule, but I can not, so far as I am concerned, evade the operation of that rule. It is not my purpose, Mr. Speaker, to enter upon a detailed discussion of the various propositions relied upon to sustain this resolution. I do not agree that when the House comes to consider the questions which seem to be relied upon by my distinguished friend from Massachusetts [Mr. POWERS] with such zeal, upon a fair analysis of the facts, the House will vote to sustain a specification based upon the suggestion of the question of contempt in either case. I am not going to discuss it in detail now. I do not agree with the majority of the committee in any of the items upon which they rely, except the last item. I do not agree that the gentlemen representing the majority of this committee have succeeded—mark you, have succeeded—in stating the rightful conclusions in relation to the other charges. Nor do I agree that they have succeeded in stating the facts as they are disclosed by this record in connection with those other charges. But I am not going into a discussion of this question now. Later on, if the House should adopt this resolution, the time will come when it is for the House to say, in the exercise of its intelligence and its judgment, what the specifications shall be.

I do not propose to discuss them for the further reason that it is my purpose, when the question is taken upon this resolution, to vote in favor of it, and I want to give the House, for a moment, the reason that I have for so doing. I do it solely upon the ground of the last specification—the using of a false certificate for the purpose of receiving money from the Treasury of the United States. And it is because I feel bound by the record as it stands before us to vote for this resolution for that reason that I do not consider it now essential to discuss the other reasons that have been relied upon in argument. If we reach that stage, as I understand the orderly method of procedure, if the House in the exercise of its wisdom adopts this resolution——

Mr. HENRY of Texas. Will the gentleman yield for a question?

Mr. LITTLEFIELD. Yes.

Mr. HENRY of Texas. I understand the gentleman to say that he is willing to submit the charge on the question of the fraudulent account.

Mr. LITTLEFIELD. I am coming right to that.

Mr. HENRY of Texas. Then, if the gentleman believes that Judge Swayne acted fraudulently in making those accounts, does he not think these other specifications would throw light on the intent of Judge Swayne in the account matter?

Mr. LITTLEFIELD. I do not think this House, in an impeachment proceeding, grave as it is, will undertake to present to the Senate of the United States and stand before this country upon the proposition that it is necessary to rely upon the atmosphere created by unsustained charges in order to sustain a charge that is valid in its character. That is the way I answer

that. I do not believe in recognizing the validity of a proposition that is not sustained for the purpose of creating in the mind of any tribunal, either this one or the Senate of the United States, any element of prejudice or passion against the man charged. He is entitled to be judged when it reaches the Senate of the United States. If I understand the law of this land, which has been so affectingly referred to by my distinguished friend, who seems to labor under the impression that in some way or other the law has been abused by this man under some circumstances—if I understand the law he is entitled to be judged upon the specifications filed, and the evidence under each specification is to be relied upon alone for the purpose of establishing that specification. I do not believe that an unfounded specification or the evidence relied upon to support it can be imported into the case in order to support a good specification. That is my view of that.

Mr. HENRY of Texas. Nor do I believe that an unfounded specification should be so presented.

Mr. LITTLEFIELD. That, I think, answers the gentleman's proposition. Of course this is a matter that every man must exercise his judgment upon. Personally, I will not vote for a moment to sustain any specification that I do not believe the Senate of the United States on its oath and its conscience on this record would not be bound to sustain as established beyond a reasonable doubt. That is my attitude in connection with that. I may be wrong, but I am obliged to be governed by it.

Now, I want to say just a word or two about this last specification. I think this House is entitled to the benefit of the work and the investigation of this committee and a fair statement from the committee of the reasons that have produced the conclusions which we have reached.

Upon the record in this case there is no question but that Judge Swayne, since 1896, has uniformly certified for his travel and attendance and his "reasonable expenses" $10 per diem. There is no question upon the record in this case but that at least in several instances, and the latest in 1903, only last year, the only amount that he could have expended for his board and sustenance while attending court for forty-one days is $1.25 a day. There is no evidence in this case as to what Judge Swayne may have expended for travel going from his place of residence or wherever he may have been to Tyler, Tex., and return; but upon any hypothesis it could not have exceeded sixty or seventy-five dollars, so that there can be no question but that the issue is squarely raised upon this question of the false certificate, and it runs all along during that period.

Now, what is the law in relation to the question of false certificate? I am simply stating my belief, so far as I am concerned. I certainly hope that no man in this House will feel that I am urging him either to sustain or to refuse to sustain this resolution. I think it is beneath the dignity of any man on this committee to urge that proposition upon this House. Later on, if I have occasion in the discussion of the items which are involved, I will give the House my reasons, and then let every man say what he ought to do without any urging or any pressing from me, either one way or the other.

Now, what is the law in relation to these certificates? The statute in general terms expressly prohibits a judge from receiving anything by way of compensation in addition to his stipulated salary of $5,000 a year. Up to 1896, after 1881, there appeared in the various appropriation bills an appropriation for the judicial department, an appropriation which provided for the payment of expenses of district judges when sent into other districts for the purpose of holding court under direction of the proper authority. The Comptroller of the Treasury held under that language in the appropriation bill that there was payable to the district judges under such circumstances simply their actual disbursement for expenses. They were required to certify them in detail. That is up to 1896.

In the appropriation bill of 1896 there appeared for the first time the language which I can quote in substance, near enough for the purpose of the point I want to make—the language under which the judges have since been paid. To my mind the only question for us to determine, or at least for me to determine, is, assuming the existence of the legislation, which simply authorizes the payment of the actual expenses up to 1896, How is it affected by this new legislation?

Mr. LACEY. Let me interrupt the gentleman right there.

Mr. LITTLEFIELD. If the gentleman will wait until I finish this sentence.

Mr. LACEY. I want to make a correction. I want to state that prior to 1896 the act of 1891 was passed, using the same identical language as to the court of appeals. It provided that the court of appeals should have expenses for travel, and was in exactly the same language that was passed in 1896 and had been in force for five years, and the circuit judges, sitting in the court of appeals, had been drawing $10 a day in this circuit and all other circuits, and consequently, when this act was passed in 1896, we had five years of construction of the same identical language.

Mr. LITTLEFIELD. That may be so. I want to state frankly that the history of that statute never has been called to my attention. I do not question the gentleman's statement about it.

I am calling attention to this legislation. What the facts are as to that statute I do not know. I think perhaps I ought to say here in all fairness that I do not think it is fair to assume that because judges have on file a certificate showing the payment of $10 a day that they have not disbursed that sum of money. I do not wish to discuss facts that are not before the House and are not within my personal knowledge. I will say this: I have no doubt in the case of many judges that $10 a day does not equal the sum they actually expend. So that it is quite obvious that upon the statement of $10 per day, without giving further facts necessary to establish the proposition, it is not quite fair to assume, in discussing this in the presence of the House and before the country, that every judge who has on file a certificate showing expenses of $10 per day has exceeded his actual disbursement, because there is no evidence of that fact, and no man can fairly assume it in the absence of the evidence.

I will resume the history of this legislation. The Comptroller held that under the legislation prior to 1896 only actual disbursements could be paid. In 1896 there appeared in the appropriation bill for the first time the language under which these certificates in controversy have been paid, at least since 1896. The only question in my mind is this: Taking the legislation which by the construction of the Comptroller simply allows the payment of actual expenses, what did the new legislation do? Did it enlarge, or did it narrow or restrict the operation of the language of the previous legislation? As I understand, the appropriation of 1896 provided that the expenses should be "reasonable." So I am obliged to conclude that, although they might have been actual, if they were in excess of "reasonable expenses" they would not be authorized, because they could only certify to reasonable expenses. The language "expenses" alone is used in a previous appropriation, and in the appropriation for 1896 we find the language "travel and attendance." Expenses is a general term and would probably include everything that could be called expenses. I find it limited in 1896 by travel and attendance, and then the further limitation of "not to exceed $10 a day." All of which will be narrow and restrict the operation of the statute, minimizing the discretion that existed under the previous legislation.

Then the judge is authorized to certify in accordance with the provision of the statute, and his certificate is taken by the disbursing officers as importing absolute verity, and therefore, I suppose, we have the right to assume and perhaps the right to demand, and I feel that we have, that the certificate should import actual verity. I can not help the conclusion, so far as I am concerned—though I may be wrong about this, and I do not undertake to force it upon the judgment or intelligence of any other Member of the House—that this statute of 1896 is narrower and more restricted in its construction than the legislation that existed prior to that time. Now let me read, for the information of the House, a section of the Revised Statutes of the United States which to my mind, although I somewhat regret it, but I can not help feeling, has more or less of a distinct bearing upon this whole subject as to the magnitude of the offense and its character.

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, mili-

tary stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

It will be noticed that it does not require the qualification of intent to defraud; simply actual knowledge of falsity. While I do not like to reach the conclusion, I am bound to say that I am driven to the conclusion that we can not quite hold, if the record discloses an offense under this section, that it is de minimis non curet lex; that it is to be ignored as a trifling matter. At least, that is the way I feel. Of course, every other man must exercise his own judgment. Now, what are the facts in the case with reference to this before the committee?—and I hope the House will realize and appreciate it. If I apprehend it correctly, it is the duty of this committee on this great subject to not only investigate thoroughly and give full and free opportunity to be heard, but to report its conclusions, and give the House its reasons upon any of these questions involved. Now, the facts are that Judge Swayne was a witness before the subcommittee. He answered and explained every charge before that committee except this charge. We all know that the general rule is that when a man meets a complaint involving several items and fails to answer one item and answers the others the irresistible conclusion is that there is no answer to the one, and when he explains five and fails to explain the sixth the same inference necessarily follows upon the record. Now, it is true that Judge Swayne, through his counsel, offered to show that the general practice in the United States upon the part of district and circuit judges was precisely like the practice in which he engaged. There is no dispute about the facts of the certificate. There is no dispute about the fact that only $1.25 in some instances was paid. Now, that testimony, in my judgment, was rightly and properly excluded, because I do not believe that a controversy between other people could be inquired into affirmatively as a matter of original evidence by Judge Swayne by way of exculpation. I think it would be clearly res inter alios acta.

I do not know of any rule—of course I may be mistaken about this—that would authorize the introduction of that testimony as an affirmative proposition. Yet I have no doubt that Judge Swayne, if he had desired to do so, could have been heard before that subcommittee to give the reasons why he signed this certificate, and if those reasons involved the fact that, within his knowledge, there were other judges situated in like manner, who had uniformly given that same construction to this legislation, or if it involved the fact, as it might possibly, that he had signed that certificate on the suggestion of the marshal, for instance, that it was the custom and practice of the judges to sign in the same manner, I have no doubt but that evidence would have been admissible on his part for the purpose of showing, so far as he could show—I am not saying whether he could do it successfully or not—that he signed the certificate with an honest intent, without any intention of wrong, or that the construction that he placed upon it was one that he could fairly place upon it. But he was before the committee and failed to do so. It was open to the committee, although his counsel did not ask him that question, to so inquire; but I submit that the committee could hardly have done it with great propriety, because he was present—not only in person, but by counsel—controverting the greatest crime that could be alleged against him. It may be—I do not know what the fact is—that his counsel, for reasons of his own, did not desire the explanation made and, therefore, did not allow it to be made, and if that was the feeling of counsel it would have been an outrage upon the rights of Judge Swayne for a man on that committee to have insisted upon making him at that time, in this stage of these proceedings, disclose his reasons therefor. Now, I simply have this to say: I do not know what will appear when this case reaches the United States Senate, in case this House impeaches and places this man before that body, but I do not quite see how, on this record, as it stands here, the Senate of the United States could fail to sustain this charge, unanswered and unexplained.

Now, I go further, as the minority views indicate. I do not say that Judge Swayne may not be able at the proper time and in the proper place, in his judgment selected, to give a reason that may satisfy the Senate of the United States that this charge can not be sustained. But your committee was confronted with this proposition. Here was the evidence and here was the statement of the respondent taken in his own behalf, and I must say, so far as I am concerned, I can not reach any other conclusion than the conclusion I have reached, and that is upon the record unanswered and unexplained. I am obliged to vote, and I shall vote when the time comes, to sustain this resolution. Later, if there is occasion and the House desires it and will give me a hearing, I will try to express in my weak and feeble way some views I have upon the other proposition, as to which I not only do not agree, but I absolutely disagree from beginning to end with my distinguished friends who have taken the other side of this controversy.

Mr. PALMER and Mr. LAMAR of Florida rose.

The SPEAKER. For what purpose does the gentleman from Pennsylvania rise?

Mr. PALMER. I rose for the purpose of giving notice that I shall move the previous question after Mr. Lamar concludes his address.

Mr. LAMAR of Florida. Mr. Speaker, I shall detain the House but a very few moments, because I see that this debate has taken a more extended range than is necessary, considering the fact that the entire committee has recommended the resolution for the impeachment of Judge Swayne. It is not to be assumed that when the entire Judiciary Committee of this House submits a resolution to impeach a judge for corrupt conduct, after that committee has been in charge of making investigation of his conduct for a year, and having the entire evidence before them, that this House would pretend to vote against that resolution. I assume, therefore, that the resolution to impeach will pass—will be voted upon affirmatively. When it comes to the further question of specific charges against Judge Swayne, then, Mr. Speaker, I shall ask to prefer the charge and conclusively to prove it to every fair-minded man in this House that he is a tyrannical and a corrupt judge.

I was glad to hear, Mr. Speaker, the gentleman from Massachusetts lay small stress, comparatively, upon his swindling the Federal Government, small stress compared with the offense of persecuting some of the citizens of Florida. And I was very glad, Mr. Speaker, that it came from a State outside of the section in which I live. I was glad to hear the voice also of the gentleman from Pennsylvania upon the same line, for I declare to you, Mr. Speaker, and I am acquainted with the general political history of my State, I am acquainted with the general reputation of Judge Swayne in my State, I am acquainted with the men who were sworn before that committee in that State and out of it, and I declare to you, as far as my word is worth anything with this House, that the highest and best testimony, of the highest and best men sworn in that case, fixes upon Judge Swayne the character not only of a corrupt judge, but, worse still, of a tyrannical judge. Judge Swayne has been denounced by the legislature of the State of Florida twice for his corrupt conduct—in 1903 and in the year 1893, an intervening period of ten years. This judge has been denounced by the State of Florida twice.

Now, Mr. Speaker, I congratulate this House and the country, and especially the people of the State of Florida, that we have got one ground upon which we can all stand to impeach Judge Swayne. He has mulcted the Federal Government out of money that now ought to be in the Federal Treasury. I am glad that the people of Massachusetts and Maine and California can meet the people of my State upon the common ground that he is a violator of the law. But the charge of falsely certifying his accounts is a small and puerile charge compared with the charge I lay against him and for which the people of the State of Florida have denounced him, through their legislature, and that is that under the specious pretext of administering justice he has administered the Federal court in the northern district of Florida in the private interest of his own individual private hates and in the individual monetary interests of attorneys before his court; that there is a corrupt collusion between Judge Swayne and at least one attorney in his court to secure litigation to the one and revenge to the other that stamps Judge Swayne with infamy. That is the charge.

There is no indirection about that charge, so far as I am concerned, and I will undertake to prove it upon the floor of this House or forfeit its respect.

But, as I stated, I do not consider this the time to bring forth the proof; but in a general way I will undertake to say, Mr. Speaker, that Judge Swayne is under the corrupt domination of a corrupt man, and that Judge Swayne himself is corrupt, and that these two have conspired in the State of Florida to perpetrate the most villainous wrongs upon the people of that State, and all under the guise of legal discretion. The pretext is made that he might make a mistake in a matter—that he might err here and err there. Everybody concedes, Mr. Speaker, that a judge may sometimes honestly err. But who believes that an honest man of ordinary intelligence will or can err when the facts are so plain before him that a fool can not err? And that is the charge I lay against this corrupt judge.

I have nothing further to say at this time. When the charges

and specifications come up I desire to submit my views upon the question pending. [Loud applause.]

Mr. PALMER. Before moving the previous question, I move to add to the resolution, after the word "high," the words "crimes and," and add the letter "s" to the word "misdemeanor;" so that it will read:

Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high crimes and misdemeanors.

Mr. PARKER. A point of order, Mr. Speaker.

The SPEAKER. The gentleman will send up his amendment.

The Clerk read as follows:

Amend by striking out all after the word "*Resolved*" and inserting "That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high crimes and misdemeanors."

Mr. PARKER. I make the point of order that in my judgment the previous question is not to be directly ordered upon a question of high privilege of this sort.

The SPEAKER. The Chair sees no reason, even without the precedents, why the House can not, if the majority desires, by vote order the previous question; but the Chair is informed that the precedents are numerous upon this subject. The previous question is in order.

Mr. PALMER. I move the previous question on the passage of the resolution as amended.

The SPEAKER. The gentleman from Pennsylvania moves the previous question on the resolution and the amendment thereto.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. PARKER. Division.

The House divided; and there were—ayes 198, noes 61.

So the previous question was ordered.

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

The SPEAKER. The question is on agreeing to the resolution as amended.

Mr. HEPBURN. Mr. Speaker, I would like to have the resolution read as amended.

The SPEAKER. Without objection, the amendment will again be reported.

The Clerk read as follows:

Resolved, That Charles Swayne, judge of the district court in and for the northern district of Florida, be impeached of high crimes and misdemeanors.

The SPEAKER. The question is on agreeing to the resolution.

The question was taken; and the resolution was agreed to.

On motion of Mr. PALMER, a motion to reconsider the vote by which the resolution was agreed to was laid on the table.

Mr. PALMER. I move the adoption of the following resolution, and send it up to the Clerk's desk to be read.

The Clerk read as follows:

Resolved, That a committee of five be appointed to go to the Senate, and at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and that the committee do demand that the Senate take order for the appearance of said Charles Swayne to answer said impeachment.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. PALMER. Mr. Speaker, I move the adoption of the following resolution, which I send to the Clerk's desk to be read.

The SPEAKER. The gentleman from Pennsylvania sends the following resolution to the Clerk's desk, which the Clerk will report.

The Clerk read as follows:

Resolved, That a committee of seven be appointed to prepare and report articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, with power to send for persons, papers, and records.

The SPEAKER. The question is on agreeing to the resolution.

Mr. LITTLEFIELD. Mr. Speaker, would the gentleman from Pennsylvania [Mr. PALMER] be kind enough to explain to the House what has been the practice heretofore in matters of this kind?

Mr. PALMER. In all cases, except the Belknap case, the practice has been to appoint a special committee to prepare the articles of impeachment to be brought in and be voted upon by the House. In all cases I have found since the foundation of the Government down to date, except the Belknap case, that has been the course pursued. In that case the Judiciary Committee investigated the case and practically brought in the articles in their report, so that it was purely a formal matter to have the Judiciary Committee formulate the charges and specifications.

Mr. LITTLEFIELD. I notice that the resolution, may it please the Chair, proposes to clothe this committee with power to send for persons and papers. Is that simply following the form that has been heretofore used?

Mr. PALMER. That is simply following the form that has been adopted heretofore.

Mr. LITTLEFIELD. Does it seem to the gentleman from Pennsylvania that it would be proper to confer upon this new committee that authority and power?

Mr. PALMER. Well, it might be that the committee might need to send for somebody to get some light. I do not know.

Mr. LACEY. Would it be proper for that committee to send for those papers, which the Judiciary Committee refused to allow to be examined, as explanatory of this question of payment of per diem?

Mr. PALMER. I do not know that the committee declined to send for any papers, and I do not think it will do any harm to leave that in. It has always been inserted in similar resolutions.

Mr. LITTLEFIELD. Of course the gentleman from Iowa [Mr. LACEY] understands that the record shows that that action was taken by the subcommittee. Now, I want to make this suggestion, if the Chair please.

As I understand the gentleman from Pennsylvania, up to the time of the Belknap trial, the practice has been to refer the matter to a special committee for the purpose of formulating the charges and specifications. I do not know that the course has been such as to establish a precedent that should not be departed from. At least it was departed from in the Belknap case. Now, I want to make this practical suggestion, if the Speaker please. The Judiciary Committee have spent a very great deal of time in the investigation of this case, and I suggest whether the House would not be likely to get as good results from the Judiciary Committee, familiar as they are with the facts in this case, although their conclusion might not be unanimous, as from a new committee that would take, or at least ought to take, relatively, quite a considerable time for the purpose of preparing the charges, and whether the House would not be entitled to have the judgment of either the majority or the minority of the committee that have given time and investigation to this case, who have, of course, indicated more or less their opinion.

I do not wish to obscure that fact at all, but merely to suggest whether the House would not receive fully as good or better results by action of that kind. In order to raise that question, Mr. Speaker, I move to strike from the resolution the words "committee of seven" and to insert in place thereof "the Committee on the Judiciary."

The SPEAKER. The Clerk will report the proposed amendment.

The Clerk read as follows:

Strike out "a committee of seven is appointed" and insert "the Committee on the Judiciary be empowered."

Mr. PALMER. Mr. Speaker, it seems to me the best practical result can be obtained by appointing a select committee. It must be obvious to every Member of the House that the Judiciary Committee is hopelessly divided on this question as to what Judge Swayne should be impeached for. The House has decided to impeach him. Now, if a select committee is raised, they will take up the testimony and report to the House articles which in their opinion can be sustained by the testimony, and then the House can intelligently pass on the subject. If this question goes to the Judiciary Committee, inevitably there will be two reports, about eleven men standing by one and the balance of the committee standing by the other. For that reason it seems to me it would be more rational and that we could get better results by the appointment of a select committee.

Mr. PAYNE. Does the gentleman from Pennsylvania think that there ought to be a committee that would be anything in the nature of a packed committee?

Mr. PALMER. No, I suppose the committee will be appointed by the Chair, and I do not imagine that anybody in this House would for a moment dream that the Speaker would appoint a packed committee. [Applause.]

Mr. PAYNE. Of course not; but I understood the gentleman from Pennsylvania to say that the Judiciary Committee was divided on this subject—upon the various articles of impeachment—and he wanted the motion to prevail so that there might be a unanimous report. It strikes me that the House is divided on the question upon what articles of impeachment this

man should be tried upon before the Senate, and that the committee ought to represent both sides of this question and all branches of it. I have no doubt the Speaker would take that into consideration, but it seems to me that there would be no objection to referring it to the Judiciary Committee because, as the gentleman says, they represent different sides of the question. It seems to me all the more desirable to refer it to a committee that takes that view of it.

Mr. PALMER. Let us get some fresh blood into this committee. Let us get somebody that is not excited over it; somebody that can take a calm and dispassionate view of the whole subject and formulate the charges upon which this man is to be tried. The Judiciary Committee has got pretty hot over it. Mr. Speaker, I ask for a vote on the amendment to the resolution.

The SPEAKER. The question is on the amendment offered by the gentleman from Maine [Mr. LITTLEFIELD].

The question was taken; and on a division (demanded by Mr. LITTLEFIELD) there were 113 ayes and 140 noes.

So the amendment was rejected.

The SPEAKER. The question now is on agreeing to the resolution.

The question was taken; and the resolution was agreed to.

On motion of Mr. PALMER, a motion to reconsider the last vote was laid on the table.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. PARKINSON, its reading clerk, announced that the Senate had passed, with amendments, joint resolution of the following title; in which the concurrence of the House of Representatives was requested:

H. J. Res. 158. Joint resolution construing the act for the relief of Julius A. Kaiser as carrying an appropriation.

The message also announced that the Senate had passed bill of the following title; in which the concurrence of the House of Representatives was requested:

S. 5567. An act to exclude from the Yosemite National Park, California, certain lands therein described and to attach to and include the said lands in the Sierra Forest Reserve.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

A message in writing from the President of the United States was communicated to the House of Representatives by Mr. BARNES, one of his secretaries.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. PARKINSON, its reading clerk announced that the Senate had passed without amendment bill of the following title:

H. R. 14468. An act to authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation, in the State of Washington.

The message also announced that the Senate had passed without amendment the following resolution:

House concurrent resolution 65.

Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on Wednesday, December 21, they stand adjourned until 12 o'clock meridian January 4, 1905.

SENATE BILL REFERRED.

Under clause 2 of Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee, as indicated below:

S. 5567. An act to exclude from the Yosemite National Park, California, certain lands therein described and to attach to and include the said lands in the Sierra Forest Reserve—to the Committee on the Public Lands.

ANNOUNCEMENT OF COMMITTEE.

The SPEAKER announced as the committee to carry the impeachment before the Senate the following:

Mr. PALMER of Pennsylvania, Mr. JENKINS of Wisconsin, Mr. GILLETT of California, Mr. CLAYTON of Alabama, and Mr. SMITH of Kentucky.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

The SPEAKER laid before the House the following message from the President of the United States; which was referred to the Committee on Insular Affairs, and ordered to be printed:

To the Senate and House of Representatives:

I transmit, for the information of the Congress, the Fourth Annual Report (with appendices) of the Governor of Porto Rico, covering the period from July 1, 1903, to June 30, 1904.

THEODORE ROOSEVELT.

WHITE HOUSE, *December 13, 1904.*

WITHDRAWAL OF PAPERS.

Mr. SNOOK, by unanimous consent, obtained leave to withdraw from the files of the House, without leaving copies, papers in the case of H. R. 15948, Fifty-eighth Congress, no adverse report having been made thereon.

On motion of Mr. PAYNE, the House (at 5 o'clock and 18 minutes p. m.) adjourned until to-morrow at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of War, transmitting additional papers in the claim of Julian Pedrera—to the Committee on Claims, and ordered to be printed.

A letter from the Acting Secretary of War, transmitting reports of inspections of disbursements and transfers of officers of the Army received in the office of the Inspector-General during the past fiscal year—to the Committee on Expenditures in the War Department.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. HEMENWAY, from the Committee on Appropriations: A bill (H. R. 16445) making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1905, and for other purposes—to the Union Calendar.

By Mr. BARTLETT: A bill (H. R. 16446) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended by act approved February 5, 1903, and for other purposes—to the Committee on the Judiciary.

By Mr. KYLE: A bill (H. R. 16447) to increase the pensions of those who have lost both feet or been totally disabled therein in the military or naval service of the United States—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16448) to amend an act to increase the pensions of those who have lost limbs or been totally disabled therein in the military or naval service of the United States, passed March 2, 1903—to the Committee on Invalid Pensions.

By Mr. GILLETT of Massachusetts: A bill (H. R. 16449) to incorporate the American National Red Cross—to the Committee on Foreign Affairs.

By Mr. BABCOCK: A bill (H. R. 16450) to authorize certain changes in the permanent system of highways, District of Columbia—to the Committee on the District of Columbia.

Also, a bill (H. R. 16451) for the opening of a connecting highway between Water Side drive and Park road, District of Columbia—to the Committee on the District of Columbia.

By Mr. WATSON: A bill (H. R. 16452) to amend and reenact section 714 of chapter 12 of the Revised Statutes of the United States, relating to judges—to the Committee on the Judiciary.

By Mr. MINOR: A bill (H. R. 16453) to provide for the use of vessels of the United States for public purposes—to the Committee on the Merchant Marine and Fisheries.

By Mr. SOUTHWICK: A bill (H. R. 16552) to revive and amend an act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States, and acts amendatory thereof—to the Committee on the Judiciary.

Also, a bill (H. R. 16553) to protect free labor and the industries in which it is employed from the injurious effects of convict labor—to the Committee on Labor.

By Mr. KALANIANAOLE: A joint resolution (H. J. Res. 177) to appropriate certain moneys to reimburse the Territory of Hawaii for expenditures made for certain improvements on public works—to the Committee on Claims.

By Mr. STEPHENS of Texas: A resolution (H. Res. 394) directing the Secretary of the Interior to inform the House of Representatives in regard to the Indian trust funds—to the Committee on Indian Affairs.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. ADAMS of Pennsylvania: A bill (H. R. 16454) granting a pension to William Mayer—to the Committee on Pensions.

By Mr. ALEXANDER: A bill (H. R. 16455) granting a pension to Howard P. Ketcham—to the Committee on Invalid Pensions.

By Mr. BEDE: A bill (H. R. 16456) granting an increase of pension to Alonzo Douglass—to the Committee on Invalid Pensions.

By Mr. BEIDLER: A bill (H. R. 16457) granting an increase of pension to Herbert S. Nelson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16458) granting an increase of pension to Lorenzo B. Fish—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16459) granting an increase of pension to Amos B. Horton—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16460) granting an increase of pension to Helen L. Fitch—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16461) granting an increase of pension to Mary R. Neville—to the Committee on Invalid Pensons.

Also, a bill (H. R. 16462) granting an increase of pension to Abraham Moore—to the Committee on Invalid Pensions.

By Mr. HENRY of Connecticut: A bill (H. R. 16463) granting an increase of pension to Franklin Taylor—to the Committee on Invalid Pensions.

By Mr. BENTON: A bill (H. R. 16464) granting an increase of pension to Austin Handy—to the Committee on Pensions.

Also, a bill (H. R. 16465) granting an increase of pension to Constantine P. Berry—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16466) granting a pension to Harriet Wilson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16467) granting an increase of pension to Seth Carpenter—to the Committee on Invalid Pensions.

By Mr. BROWNLOW: A bill (H. R. 16468) granting a pension to Mary A. Hammett—to the Committee on Pensions.

By Mr. BRUNDIDGE: A bill (H. R. 16469) for the relief of James C. Blair—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16470) for the relief of Laura J. Dills—to the Committee on War Claims.

Also, a bill (H. R. 16471) granting a pension to Martha C. Watkins—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16472) granting a pension to Frances A. McQuiston—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16473) granting a pension to John R. Karns—to the Committee on Invalid Pensions.

By Mr. CASSEL: A bill (H. R. 16474) granting an increase of pension to Oliver McFadden—to the Committee on Invalid Pensions.

By Mr. CLARK: A bill (H. R. 16475) for the relief of Annie T. Jones, widow of Jonathan L. Jones, deceased—to the Committee on Claims.

By Mr. CROFT: A bill (H. R. 16476) granting an increase of pension to P. P. Toale—to the Committee on Invalid Pensions.

By Mr. DARRAGH: A bill (H. R. 16477) granting an increase of pension to William Ostermann—to the Committee on Invalid Pensions.

By Mr. DAVIS of Florida: A bill (H. R. 16478) for the relief of George Weathersbee—to the Committee on War Claims.

By Mr. DAYTON: A bill (H. R. 16479) for the relief of Isaac W. Busey—to the Committee on Claims.

Also, a bill (H. R. 16480) granting an increase of pension to Preston Glover—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16481) granting an increase of pension to F. M. Halbritter—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16482) granting an increase of pension to Samuel Edmond—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16483) granting an increase of pension to James H. Silcott—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16484) granting an increase of pension to Thomas Flumm—to the Committe on Invalid Pensions.

By Mr. DWIGHT: A bill (H. R. 16485) to remove the charge of desertion from the military record of Samuel Gordon—to the Committee on Military Affairs.

Also, a bill (H. R. 16486) granting an increase of pension to Parmenas A. Norton—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16487) granting an increase of pension to Freeman Stanton—to the Committee on Invalid Pensions.

By Mr. FOSTER of Illinois: A bill (H. R. 16488) granting an increase of pension to Daniel Reagan—to the Committee on Invalid Pensions.

By Mr. FOWLER: A bill (H. R. 16489) granting a pension to William Shannon—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16490) granting an increase of pension to David A. Maple—to the Committee on Invalid Pensions.

By Mr. GARDNER of Massachusetts: A bill (H. R. 16491) for the relief of Robert G. Carter, United States Army, retired—to the Committee on Military Affairs.

By Mr. HEMENWAY: A bill (H. R. 16492) for the relief of Malinda S. Gray—to the Committee on Claims.

By Mr. HEPBURN: A bill (H. R. 16493) granting a pension to Anna Johnson—to the Committee on Invalid Pensions.

By Mr. HILDEBRANT: A bill (H. R. 16494) to refer to the Court of Claims the claim of John S. Armstrong for compensation for loss of wheat in 1862—to the Committee on War Claims.

By Mr. HOPKINS: A bill (H. R. 16495) granting a pension to Lucinda Stamper—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16496) granting an increase of pension to John P. Mead—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16497) correcting the military record of Levi Carpenter and granting him a pension—to the Committee on Military Affairs.

Also, a bill (H. R. 16498) correcting the military record of Henry Craig and granting him a pension—to the Committee on Military Affairs.

By Mr. HOWELL of New Jersey: A bill (H. R. 16499) granting an increase of pension to Green Yeiser—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16500) granting an increase of pension to Fuller B. Errickson—to the Committee on Invalid Pensions.

By Mr. HOWELL of Utah: A bill (H. R. 16501) granting an increase of pension to George Jaggers—to the Committee on Invalid Pensions.

By Mr. HUNTER: A bill (H. R. 16502) granting a pension to Henry Rader—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16503) granting a pension to Dillion Asher—to the Committee on Invalid Pensions.

By Mr. KNAPP: A bill (H. R. 16504) granting an increase of pension to L. L. Lowell—to the Committee on Invalid Pensions.

By Mr. KYLE: A bill (H. R. 16505) granting a pension to Frances F. Mower—to the Committee on Invalid Pensions.

By Mr. LAFEAN: A bill (H. R. 16506) granting a pension to Samuel B. Gray—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16507) granting a pension to Daniel Carter—to the Committee on Invalid Pensions.

By Mr. LAWRENCE: A bill (H. R. 16508) granting an increase of pension to Ferdinand Weise—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16509) granting an increase of pension to Egbert J. Olds—to the Committee on Invalid Pensions.

By Mr. LITTLE: A bill (H. R. 16510) to remove the restrictions upon the alienation of lands in Indian Territory—to the Committee on Indian Affairs.

By Mr. LLOYD: A bill (H. R. 16511) granting an increase of pension to Henry J. Otto—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16512) granting a pension to Sarah J. Ridgeway—to the Committee on Pensions.

By Mr. LOUDENSLAGER: A bill (H. R. 16513) granting an increase of pension to Enoch McCabe—to the Committee on Invalid Pensions.

By Mr. MOON of Pennsylvania: A bill (H. R. 16514) granting an increase of pension to Robert W. Patrick—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16515) granting an increase of pension to Jacob Herbert—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16516) granting an increase of pension to William Mays—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16517) granting an increase of pension to Philip Liebrick—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16518) to correct the war record of Edward J. Gallagher, late first lieutenant Company G, Thirty-third Pennsylvania Volunteer Infantry—to the Committee on Military Affairs.

Also, a bill (H. R. 16519) granting a pension to Mary E. Quick—to the Committee on Invalid Pensions.

By Mr. McCALL: A bill (H. R. 16520) granting an increase of pension to George D. Street—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16521) granting a pension to Georgia A. Richardson—to the Committee on Invalid Pensions.

By Mr. McMORRAN: A bill (H. R. 16522) granting a pension to Emma J. Campbell—to the Committee on Invalid Pensions.

By Mr. OVERSTREET: A bill (H. R. 16523) for the relief of Maj. E. W. Halford, paymaster, United States Army—to the Committee on Claims.

By Mr. PADGETT: A bill (H. R. 16524) granting an increase of pension to Nancy B. Stratton—to the Committee on Pensions.

By Mr. RAINEY: A bill (H. R. 16525) granting an increase of pension to Henry A. Glenn—to the Committee on Invalid Pensions.

By Mr. ROBINSON of Indiana: A bill (H. R. 16526) granting an increase of pension to John H. Caton—to the Committee on Invalid Pensions.

By Mr. SCOTT: A bill (H. R. 16527) granting an increase of pension to Francis A. Heath—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16528) granting an increase of pension to Joseph G. Bailey—to the Committee on Invalid Pensions.

By Mr. SHEPPARD: A bill (H. R. 16529) for the relief of J. V. McDaniel—to the Committee on War Claims.

By Mr. SIBLEY: A bill (H. R. 16530) granting an increase of pension to William P. Johnston—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16531) granting an increase of pension to Samuel R. Smith—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16532) granting an increase of pension to Samuel Stewart—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16533) granting an increase of pension to Samuel Greenlee—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16534) granting an increase of pension to Robert Stewart—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16535) granting a pension to Blanche Douglass—to the Committee on Invalid Pensions.

By Mr. DALZELL: A bill (H. R. 16536) granting a pension to Mary Kennedy—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16537) granting an increase of pension to Edward Mailey—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16538) granting an increase of pension to Solomon Spradling—to the Committee on Invalid Pensions.

By Mr. SMITH of Kentucky: A bill (H. R. 16539) for the relief of the drafted men of Pendleton and other counties in the State of Kentucky—to the Committee on War Claims.

By Mr. SMITH of Pennsylvania: A bill (H. R. 16540) granting a pension to Annie Orr—to the Committee on Invalid Pensions.

By Mr. SOUTHWICK: A bill (H. R. 16541) for the relief of Lawrence Collins and Edward J. Flanigan—to the Committee on Claims.

Also, a bill (H. R. 16542) to correct the record of Harrison Clark—to the Committee on Military Affairs.

Also, a bill (H. R. 16543) for the relief of Daniel Leary—to the Committee on War Claims.

Also, a bill (H. R. 16544) granting an increase of pension to Varner G. Root—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16545) granting an increase of pension to Jacob F. Bradt—to the Committee on Invalid Pensions.

Also, a bill (H. R. 16546) granting an increase of pension to George A. Van Bergen—to the Committee on Invalid Pensions.

By Mr. STERLING: A bill (H. R. 16547) for the relief of Z. T. Taylor—to the Committee on Claims.

By Mr. THOMAS of Ohio: A bill (H. R. 16548) granting an increase of pension to Hamilton Se Cheverell—to the Comimttee on Invalid Pensions.

By Mr. THOMAS of North Carolina: A bill (H. R. 16549) for the relief of the heirs of Dr. J. B. Owen—to the Committee on War Claims.

By Mr. WEBB: A bill (H. R. 16550) to complete the military record of James A. Sams, and for an honorable discharge—to the Committee on Military Affairs.

By Mr. PERKINS: A bill (H. R. 16551) granting an increase of pension to William Morris—to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Petition of 107 citizens of the United States, asking an appropriation to pay depositors of the defunct Freedman's Savings Bank—to the Committee on Banking and Currency.

Also, petition of citizens of Lawrence, Mass., in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. BEIDLER: Papers accompanying bill granting a pension to Herbert S. Nelson—to the Committee on Invalid Pensions.

By Mr. BENNY: Petitions of Division No. 53, Brotherhood of Locomotive Engineers, of Jersey City, N. J., and Division No. 157, Brotherhood of Locomotive Engineers, of Jersey City, N. J., favoring pensions for locomotive engineers who served during the civil war—to the Committee on Invalid Pensions.

By Mr. BENTON: Papers to accompany bill granting a pension to Harriet Wilson—to the Committee on Invalid Pensions.

Also, papers to accompany bill granting an increase of pension to Seth Carpenter—to the Committee on Invalid Pensions.

Also, papers to accompany bill granting an increase of pension to Constantine P. Berry—to the Committee on Invalid Pensions.

Also, papers to accompany bill granting an increase of pension to Austin Handy—to the Committee on Pensions

Also, papers to accompany bill H. R. 15819, granting a pension to Testus H. Sanders—to the Committee on Invalid Pensions.

By Mr. BRUNDIDGE: Petition of James C. Blair, of Company H, Eighteenth, and Company G, Fourteenth Illinois Infantry, for a pension—to the Committee on Invalid Pensions.

Also, papers to accompany bill for the relief of Frances Amanda McQuinston, for a pension—to the Committee on Invalid Pensions.

Also, papers to accompany bill for the relief of Martha C. Watkins—to the Committee on Invalid Pensions.

By Mr. BURKE: Petition of homesteaders on Rosebud Reservation, asking extension of sixty days' time to perfect required improvements on land, owing to unfavorable weather—to the Committee on the Public Lands.

By Mr. CASSEL: Petition of certain business men of Lititz, Pa., urging the passage of bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. DALZELL: Papers to accompany House bill granting a pension to Mrs. Mary Kennedy—to the Committee on Invalid Pensions.

Also, papers to accompany House bill granting an increase of pension to Solomon Spalding—to the Committee on Invalid Pensions.

Also, papers to accompany House bill granting an increase of pension to Edward Mailey—to the Committee on Invalid Pensions.

Also, papers to accompany bill H. R. 15608, preventing the sale of intoxicants on certain days in the District of Columbia—to the Committee on the District of Columbia.

By Mr. DARRAGH: Petition of W. E. Winton and 55 other residents of Ithaca, Gratiot County, Mich., for a constitutional amendment making polygamy a breach of the national law—to the Committee on the Judiciary.

Also, petition of A. W. Wright and 70 other citizens of Alma, Mich.; the Monday Club, of St. Louis, Mich., and the Woman's Club, of Big Rapids, Mich., in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. DAYTON: Papers to accompany bill granting an increase of pension to Samuel Edmond—to the Committee on Invalid Pensions.

Also, papers to accompany bill to increase the pension of Frederick M. Halbritter—to the Committee on Invalid Pensions.

By Mr. DRAPER: Petition of church members of Schaghticoke, N. Y., in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. DWIGHT: Petition of Parmenas A. Norton, for an increase of pension—to the Committee on Invalid Pensions.

Also, papers to accompany bill to correct the military record of Samuel Gordon by removing the charge of desertion—to the Committee on Military Affairs.

By Mr. ESCH: Petition in favor of the Lovering bill—to the Committee on Ways and Means.

By Mr. EVANS: Affidavits in support of bill H. R. 16353 for relief of the Society of the United Brotherhood in Christ—to the Committee on War Claims.

By Mr. FULLER: Memorial of the grand jury of United States district court of Porto Rico, on the necessity of public buildings for Porto Rico—to the Committee on Insular Affairs.

By Mr. GARDNER of Massachusetts: Petition of Rev. George F. Beecher and twenty-eight others, of Gloucester, Mass.; Woman's American Baptist Home Mission Society, of Salem, Mass., and Mrs. Helen L. Willmonton, of Manchester, Mass., in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. HASKINS: Petition of Henry Crocker and others, of Windsor, Chester, Andover, and Weston, Vt., in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. HOWELL: Papers in support of bill for the relief of Henry C. Snyder— to the Committee on Invalid Pensions.

By Mr. HUGHES: Petition in favor of bill H. R. 13778, to increase the power of the Interstate Commerce Commission for the purpose of securing equalities of rights of transportation for all citizens over the interstate railroads of the United States—to the Committee on Interstate and Foreign Commerce.

By Mr. KNAPP: Petition of Farwell & Rhines, of Watertown, N. Y., praying for the enactment of bill H. R. 7775—to the Committee on Ways and Means.

By Mr. LAFEAN: Petition of Daniel Carter for increase of pension by special act of Congress in lieu of pension he is now receiving—to the Committee on Invalid Pensions.

By Mr. LINDSAY: Petition of the Grand Camp of the Arctic Brotherhood, demanding elective representation in Congress for Alaska—to the Committee on the Territories.

Also, memorial of the Travelers' Protective Association, in favor of amending the bankruptcy laws—to the Committee on the Judiciary.

Also, petition of C. B. Parsons, president of the Maritime Association of the Port of New York, calling the attention of the Rivers and Harbors Committee to the importance of completing the work at Point Judith Harbor—to the Committee on Rivers and Harbors.

By Mr. LITTLE: Petition and memorial of Leroy Noble, to accompany bill H. R. 16126, for the relief of Leroy Noble—to the Committee on Invalid Pensions.

By Mr. LLOYD: Petition of A. F. Bumpus and others, asking for increase of pension for Henry J. Otto, of Kirksville, Mo.—to the Committee on Invalid Pensions.

Also, petitions and affidavits to accompany application of Sarah J. Ridgeway for pension—to the Committee on Pensions.

By Mr. LOVERING: Petition of Woman's Missionary Society of Mansfield, Mass., in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. McCALL: Petition of the Warren Avenue Baptist Church, of Boston, Mass., in favor of an investigation by this Government of conditions in Kongo State—to the Committee on Foreign Affairs.

By Mr. McMORRAN: Petition of citizens of Michigan, in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. McNARY: Petition of Susan E. Cheney and others, of Boston and Dorchester, in favor of a constitutional amendment prohibiting polygamy—to the Committee on the Judiciary.

By Mr. NEEDHAM: Resolution of the Chamber of Commerce of San Francisco, relative to the barkentine *Andromeda*—to the Committee on the Merchant Marine and Fisheries.

Also, resolution of the Chamber of Commerce of San Francisco, relative to enlarging the powers of the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

Also, resolution of the Chamber of Commerce of San Francisco, relative to the port of Honolulu, Hawaii—to the Committee on Rivers and Harbors.

Also, resolution of the chamber of commerce of San Francisco, relative to the harbor of Oakland—to the Committee on Rivers and Harbors.

Also, resolution of the chamber of commerce of San Francisco, relative to the erection of a military depot in San Francisco—to the Committee on Military Affairs.

Also, resolution of the chamber of commerce of San Francisco, relative to proposed improvements at the Presidio Military Reservation—to the Committe on Military Affairs.

By Mr. ROBINSON of Indiana: Petition of A. D. Morse and 25 other citizens of Butler, Ind., in favor of bill H. R. 13778, known as the Hearst bill, to enlarge the powers of the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

Also, affidavit to accompany bill granting an increase of pension to John C. Caton, captain Company F, One hundred and fifty-second Regiment Indiana Volunteers—to the Committee on Invalid Pensions.

By Mr. RUSSELL: Petition of several citizens of Texas, asking that an increase of pension be granted to James McCorkle, formerly a member of Company K, First United States Naval Volunteer Engineers—to the Committee on Invalid Pensions.

By Mr. RYAN: Petition of the Maritime Association of New York, favoring improvements at Point Judith Harbor—to the Committee on Rivers and Harbors.

Also, resolution of the chamber of commerce of Buffalo, N. Y., favoring the introduction of the pneumatic-tube system in Buffalo, N. Y.—to the Committee on the Post-Office and Post-Roads.

By Mr. SHEPPARD: Petition of J. V. McDaniel, of Pecan Gap, Tex., for payment for property confiscated by the Union Army in 1863—to the Committee on War Claims.

By Mr. SIBLEY: Papers to accompany bill to increase pension of William P. Johnson—to the Committee on Invalid Pensions.

Also, resolution of Pomona Grange, No. 10, of Warren County, Pa., asking for establishment of a parcels post—to the Committee on the Post-Office and Post-Roads.

Also, resolution of Pomona Grange, No. 10, of Warren County, Pa., against repeal of the Grout Act—to the Committee on Agriculture.

By Mr. SPERRY: Petition of citizens of New Haven, Conn., favoring a report of statistics relating to marriage and divorce laws—to the Committee on the Judiciary.

By Mr. STERLING: Papers to accompany bill H. R. 16423, for relief of Emma Hunter—to the Committee on Invalid Pensions.

By Mr. THOMAS of North Carolina: Papers to accompany bill for relief of the heirs of Dr. J. B. Owen, deceased—to the Committee on War Claims.

By Mr. WARNOCK: Papers to accompany bill H. R. 16168, for relief of Isaiah H. McDonald, late lieutenant, United States Army—to the Committee on Military Affairs.

By Mr. WEBB: Papers to accompany bill to correct the military record of James A. Sams—to the Committee on Military Affairs.

By Mr. WOOD: Petition of Hightstown (N. J.) Grange, No. 96, Patrons of Husbandry, favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

SENATE.

WEDNESDAY, *December 14, 1904.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved.

COMMITTEES OF THE SENATE.

Mr. HALE. Mr. President, I rise to present a privileged resolution, which I ask may have immediate consideration.

The resolution was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the membership of the after-named committees, for the present Congress shall be as follows, to take effect December 15, 1904:

On the Judiciary.—Messrs. Platt of Connecticut (chairman), Clark of Wyoming, Fairbanks, Nelson, McComas, Depew, Mitchell, Spooner, Bacon, Pettus, Culberson, Blackburn, and Patterson.

On Interoceanic Canals.—Messrs. Mitchell (chairman), Platt of New York, Millard, Kittredge, Dryden, Hopkins, Knox, Morgan, Carmack, Taliaferro, and Gorman.

On Organization, Conduct, and Expenditures of the Executive Departments.—Messrs. Allee (chairman), Wetmore, Beveridge, Allison, Knox, McLaurin, Blackburn, Carmack, and Stone.

On Agriculture and Forestry.—Messrs. Proctor (chairman), Hansbrough, Warren, Foster of Washington, Dolliver, Quarles, Burnham, Bate, Money, Simmons, and Latimer.

On Appropriations.—Messrs. Allison (chairman), Hale, Cullom, Perkins, Warren, Wetmore, Gallinger, Elkins, Cockrell, Teller, Berry, Tillman, and Daniel.

On Canadian Relations.—Messrs. Fulton (chairman), Dryden, Hale, Fairbanks, Crane, Tillman, Bailey, Clark of Montana, and Clarke of Arkansas.

On Coast Defenses.—Messrs. Knox (chairman), Hawley, Alger, Ball, Ankeny, Heyburn, Culberson, Taliaferro, Clay, Simmons, and Foster of Louisiana.

On Commerce.—Messrs. Frye (chairman), Elkins, Nelson, Gallinger, Penrose, Depew, Perkins, Foster of Washington, Quarles, Alger, Hopkins, Berry, Martin, Clay, Mallory, Foster of Louisiana, and Stone.

On Cuban Relations.—Messrs. Burnham (chairman), Platt of Connecticut, Aldrich, Mitchell, Kittredge, Hopkins, Clapp, Teller, Money, Taliaferro, and Simmons.

On Engrossed Bills.—Messrs. Cockrell (chairman), Clapp, and Dick.

To Examine the Several Branches of the Civil Service.—Messrs. Clapp (chairman), Ball, Smoot, Crane, Culberson, Simmons, and McCreary.

On Indian Affairs.—Messrs. Stewart (chairman), McCumber, Bard, Clapp, Gamble, Clark of Wyoming, Long, Dillingham, Knox, Morgan, Dubois, Clark of Montana, Teller, Stone, and Overman.

On Indian Depredations.—Messrs. Dick (chairman), Beveridge, Dillingham, Dietrich, Smoot, Long, Bacon, Martin, Berry, Pettus, and McLaurin.

On Mines and Mining.—Messrs. Scott (chairman), Stewart, Kearns, Heyburn, Dick, Tillman, Clark of Montana, Clarke of Arkansas, and Newlands.

On Naval Affairs.—Messrs. Hale (chairman), Perkins, Platt of New York, Penrose, Gallinger, Burrows, Dick, Tillman, Martin, McEnery, and Blackburn.

On Post-Offices and Post-Roads.—Messrs. Penrose (chairman), Dolliver, Beveridge, Mitchell, Proctor, Burrows, Scott, Burton, Crane, Clay, Culberson, Taliaferro, Simmons, and Gorman.

On Privileges and Elections.—Messrs. Burrows (chairman), McComas, Foraker, Depew, Beveridge, Dillingham, Hopkins, Knox, Pettus, Dubois, Bailey, Overman, and Clarke of Arkansas.

On Public Buildings and Grounds.—Messrs. Fairbanks (chairman), Warren, Scott, Quarles, McCumber, Wetmore, Crane, Culberson, Simmons, Clay, Stone, and Latimer.

On Rules.—Messrs. Spooner (chairman), Aldrich, Elkins, Lodge, Teller, Cockrell, and Bacon.

On Territories.—Messrs. Beveridge (chairman), Dillingham, Nelson, Bard, Burnham, Kean, Dick, Bate, Patterson, Clarke of Arkansas, and Newlands.

SELECT COMMITTEE.

On Industrial Expositions.—Messrs. Crane (chairman), Hawley, Hansbrough, Lodge, Clapp, Alger, Fulton, Daniel, Cockrell, Carmack, Gibson, McCreary, and Newlands.

ELECTORAL VOTES.

The PRESIDENT pro tempore laid before the Senate communications from the Secretary of State, transmitting the final ascertainment of electors for President and Vice-President for the States of West Virginia and Kentucky; which, with the accompanying papers, were ordered to be filed.